Central Law Journal.

ST. LOUIS, MO., SEPTEMBER 10, 1897.

The supreme Court of Ohio, in the case of State *ex rel.* Atty.-General v. Guilbert, 47 N. E. Rep. 551, has declared unconstitutional the "Torrens Law" of that State, enacted in 1896, which provided for the registration of land titles. The decision of the court is based on practically the same reasoning as was used by the Supreme Court of Illinois, in a case involving the constitutionality of a similar statute viz.: permitting a judicial finding by ministerial officers and permitting the taking in some cases of private property without compensation and for purposes not public. See People v. Chase, 43 Cent. L. J. 437.

What is known as the "trust fund" doctrine as applicable to insolvent corporations has been dealt another blow by the Supreme Court of Missouri in the case of Butler v. Harrison Land & Min. Co., 41 S. W. Rep. 234. The decision is radical and broad and to the effect that a transfer by an insolvent corporation of its property to its directors, in payment of corporate debts to them is, in the absence of fraud, valid as to other creditors. The question is considered from the standpoint of Missouri authority, none but decisions from that State being cited in the opinion of the court. The court voices the sentiment of those who have criticized the frequently misapplied trust fund doctrine in the declaration that "the trust doctrine, as applied to the assets of an insolvent corporation managing its own affairs, can extend no further than to restrain the disposition thereof to good-faith creditors of the corporation, whether director or nondirector creditors." Judge Robinson, who delivered the opinion of the court, claims that in all the reported cases in Missouri, where the proposition is announced, in the course of the opinion, that "the assets of the insolvent corporation are to be treated as a trust fund for the benefit of all the creditors," the insolvency of the corporation has been confessed, or a court of equity has been appealed to by the corporation, or some of its creditors to take charge of, protect, dispose of, or distribute the assets according to equitable principles, or the right of disposition of the property by the corporation had been stayed, either by its voluntary action or by legal process directed against the corporation or its officers, but never to a going concern, empowered by its very creation with the right to transact business and to acquire and alienate property. "It is no answer" says the court "to the assertion of disposition of corporate property by its directors at all times, and to whomsoever they desire, so long as it remains under the directors' management and control, to say that the corporation was created for public objects, or in consideration of public benefits, and was clothed by its charter or governing statute with the performance of public duties, and therefore its property is impressed with the qualities of a public trust; that its directors and managers cannot deal with it, other than as with a trust for the public or general good, as soon as a condition of insolvency is approached. While corporations are creations of the law, and have certain duties and obligations to perform to the public under the law, their inspiration and aim is also the advancement of private individual interests, and when its public duties and obligation have been performed, it may do any and all acts in furtherance of the purpose of its incorporation, within the scope of that purpose, which the individual corporator or corporators might do under like circumstances."

The anti-trust act of Mississippi includes a combination of insurance companies, as appears from the recent decision of the Supreme Court of that State, in the case of American Fire Ins. Co. v. State. It was held that an agreement between several fire insurance companies to delegate to an association of persons the power to prescribe premium rates, and to abide by the rates so fixed, is a "trust and combine," within the statute, defining the same as an agreement between several persons or corporations to place the control "of business," to any extent, "in the power of trustees, by whatever name called." "Conspiracies of this class," says the court, "are raised to the grade of felony, and pronounced obnoxious to the public policy of the State, and inimical to the

public welfare by reason of the great mischief they are known, of all men, to accomplish as manifested by the course of legislation and decision, the country over. Such trusts constitute one of the greatest menaces to public welfare, known to modern times, and the legislature has wisely made them felonies and denounced this severe penalty against them." See for a collection of statutes and decisions on this subject: 26 Am. & Eng. Enc. Law, p. 237*v*; *In re* Pinkney, 47 Kan. 89, 27 Pac. Rep. 179; People v. North River Sugar-Refining Co. (Cir. Ct.), 2 Lawy. Rep. Ann. 33, and note (3 N. Y. Supp. 401); People v. Sheldon, 66 Hun, at page 594, 21 N. Y. Supp. 861; Lumber Co. v. Hayes, 76 Cal. 387, 18 Pac. Rep. 391; Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St. at page 186; 1 Cook, Stock, Stockh. & Corp. Law (3d Ed.), § 503*a et seq.*, with notes; Cook, Trusts (2d Ed.), p. 51 *et seq.*; Havemeyer v. Superior Court (Cal.), 32 Am. & Eng. Corp. Cas. p. 510 (24 Pac. Rep. 121); Manufacturing Co. v. Kiotz, 44 Fed. Rep. 721. A stenographers' association was held a trust in More v. Bennett, 140 Ill. 69, 29 N. E. Rep. 888, a very striking case.

NOTES OF RECENT DECISIONS.

CONTRACT OF INDEMNITY—VALIDITY—PUBLIC POLICY.—In Trenton Pass. R. Co. v. Guarantors' Liability Indemnity Co., 37 Atl. Rep. 609, decided by the Supreme Court of New Jersey, it was held that a contract to indemnify a common carrier of passengers against losses occurring from injuries to passengers carried by it, is not invalid as against public policy, because covering losses resulting from its negligence, or the negligence of its servants. The court points out the fact that the insurer does nor contemplate the relaxation of the carrier's vigilance which would be inimical to the public interest, holding it to be obvious that if a contract indemnifying the common carrier of passengers against liability arising from his negligence tends to a relaxation of vigilance, so such a contract with respect to goods must have the same effect. Yet it now seems well settled that a common carrier of goods may enforce contracts of insurance on goods carried against all losses other than those occasioned by his negligence or the negligence of his servants. The United States Supreme Court has held, in such a case, that by obtaining insurance the carrier does not diminish his own responsibility to the owners of the goods, but rather increases his means of meeting that responsibility. The court refused to hold that the insurance was an insurance against negligence, and contrary to public policy, and void. The indemnity in no way affects the liability of the carrier to the person injured. The utmost that it does, precisely as in the carrier of goods, is to afford him a fund out of which he may be reimbursed, and that, too, but partially, for in all these policies the liability of the insured is always limited and confined to a specifically designated sum.

TOWNS—DEFECTIVE HIGHWAYS—PROXIMATE AND REMOTE CAUSE.—In Schillinger v. Town of Verona, 71 N. W. Rep. 888, decided by the Supreme Court of Wisconsin, it appeared that plaintiff's horses, of ordinary gentleness, became frightened from a cause other than a defect in the highway, and, becoming more than momentarily uncontrollable, backed the buggy off a bridge, down an embankment, which to the knowledge of the town officers was protected by no railings, and was left in a defective condition. It was held, that plaintiff could not recover of the town for the injury thereby sustained. "The case," says the court, "is this: A gentle horse becomes more than momentarily uncontrollable upon the highway. His fright is not occasioned by any defect in the highway, and while in that condition he comes in contact with a defect in the highway, and his owner and driver suffers an injury. Can there be a recovery for such injury against the town? There is unquestionably a direct conflict in the decisions on this question. The Massachusetts doctrine is that there can be no recovery under such circumstances. Higgins v. Boston, 148 Mass. 484, 20 N. E. Rep. 105, and cases cited. On the other hand, the New York doctrine seems to be that the town may be liable under such circumstances, provided the injury would not have been sustained but for the defect. Ring v. Cohoes, 77 N. Y. 83. There are, perhaps, a greater number of courts which follow the New York rule than the Massachusetts rule. See Elliott, Roads & S. pp. 448, 449, and notes; Beach Contrib.

Neg. (2d Ed.) § 245. We had supposed that there was no question but that this court had definitely adopted the Massachusetts rule. The intimation to that effect contained in Houfe v. Town of Fulton, 29 Wis. 296, was followed by the direct adjudication of the principle in Jackson v. Bellevieu, 30 Wis. 250, which case has never been overruled, but has, on the contrary, been cited with approval in a number of cases since that time, the last one being the case of Bishop v. Railway Co., 92 Wis. 139, 65 N. W. Rep. 733, where the rule is expressly stated and the authorities cited. It was impliedly, if not expressly, recognized in the opinion of the court upon the first appeal in the present case. 85 Wis. 599, 55 N. W. Rep. 1040. We regard the principle as so firmly fixed in the jurisprudence of the State as to not admit of change, even were we disposed to regard it as in any respect undesirable as an original proposition. The fact being found, without error that the horse was in effect a runaway horse at the time of the accident, and that his fright was not occasioned by any defect in the highway, the town was entitled to judgment upon the verdict."

PROCESS—SUBPŒNA — JURISDICTION — ACCEPTANCE OF SERVICE.—In Jones v. Merrill, 71 N. W. Rep. 838, decided by the Supreme Court of Michigan, it was held that jurisdiction is conferred upon one outside the territorial jurisdiction of a court by the acceptance of "due personal service" of a subpœna. The court said in part:

In the present case it is unnecessary to determine the effect of a mere acceptance of a service shown upon its face to be beyond the jurisdiction of the court. In this case the acceptance purports to be an acceptance of due personal service, which means a service which will confer jurisdiction upon the court. The case of Cheney v. Harding (Neb.), 31 N. W. Rep. 255, goes further than is necessary to sustain the holding of the circuit judge in this case. In that case the admission of service showed upon its face that the service was made at the residence of the party, in another State. Yet the court held that the defendant was bound by such acknowledgment or acceptance of service, even though outside the territorial jurisdiction of the court to which it is returnable. In the early case of Dunn v. Dunn, 4 Paige, 430, Chancellor Walworth said: "In all cases where the court has jurisdiction over the subject-matter of the suit, if the defendant who is beyond the limits of the State thinks proper to waive that objection by a voluntary appearance, or by consenting to accept as regular the service of process upon him at the place where he resides or is found, he cannot afterwards object to the regularity of the proceedings against him, founded on such service." In the case of Machine Co. v. Marble, 20 Fed. Rep. 117, it appeared that the defendant accepted service of the subpœna, "to have the same effect as if duly served on him by a proper officer." It was held that in so accepting service the defendant subjected himself to the jurisdiction of a court sitting in a district of which he was not a resident. See, also, *Ex parte* Schollenberger, 96 U. S. 369; Laramore v. Chastian, 25 Ga. 592; Shaw v. Bank, 49 Iowa, 179. The case of Weatherbee v. Weatherbee, 20 Wis. 526, distinctly holds the opposite doctrine. But that case is in conflict with our own holding in Allured v. Voller, and an attempt was made to distinguish it in Keeler v. Keeler, 24 Wis. 522. We think it an entirely safe rule that a party may waive service of process by any act clearly evidencing an intention to do so. The bare admission of the fact of service beyond the territorial jurisdiction of the court should not be deemed a waiver. But an admission of service so worded as to clearly evidence an intent to waive further service should be held to amount to a waiver. Such intent is clear in the present case.

OFFICE AND OFFICERS—CITY TREASURER—LOSS OF FUNDS.—The Supreme Court of Montana decides in City of Livingston v. Woods, 49 Pac. Rep. 437, that where a city treasurer, pursuant to statute requiring him to deposit the funds of the city, exercised prudence in the selection of a bank of good standing wherein to deposit the funds, and was free from negligence in permitting them to remain there, he was not liable for loss of the funds by the failure of the bank. The following is from the opinion of the court:

The question here presented of the liability of an officer on his official bond for the loss of public moneys, and what, if any, facts will excuse the loss, is a grave and far-reaching one. We are not only mindful of the importance of this question, but we are confronted with the great difference and conflict of views and decisions upon the subject among the best authorities and highest courts in the land. Mechem, in his work on Public Officers, says that four theories, at least, of this question, have prevailed, and these four theories are given in sections 298, 299, 300, and 301 of his work. These sections read as follows: Section 298: "One view is based upon the strict language of the bond. The officer having bound himself and his sureties, without reservation or qualification, by the express terms of his bond, that he will duly deliver and pay over the public funds which come into his hands, this obligation 'can only be met or discharged by making such delivery or payment,' and that, having bound himself by this solemn agreement to do this act, he must be 'held liable for his non-performance, though it is rendered impossible by events over which he had no control.' If the parties had desired exemption in a given contingency, it should have been 'so nominated in the bond.'" Section 299: "A second view, somewhat analogous to the last, is based upon the requirements of the public policy. 'Public policy,' says McLean, J., 'requires that every depositary of the public money should be held to a strict accountability. Not only that he should exercise the highest degree of vigilance, but that he should keep safely the moneys which come to his hands. Any relaxation of this condition would

open a door to frauds, which might be practiced with impunity. A depositary would have nothing more to do than to lay his plans and arrange his proofs, so as to establish his loss without laches on his part. Let such a principle be applied to our postmasters, collectors of the customs, receivers of public moneys, and others who receive more or less of the public funds, and what losses might not be anticipated by the public? No such principle has been recognized or admitted as a legal defense. And it is believed the instances are few, if, indeed, any can be found, where any relief has been given in such cases by the interposition of congress. As every depositary receives the office with a full knowledge of its responsibilities, he cannot in case of loss complain of hardship. He must stand by his bond, and meet the hazards which he voluntarily incurs.'" Section 300: "A third view is based upon the assumption that, by force of the statutes governing the subject, the officer becomes, in effect, the debtor of the public. His liability, therefore, becomes absolute, and, like other debtors, he is not relieved from liability because he is so unfortunate as to lose, though by unavoidable accident, the money with which he expected to make payment. In legal effect, he is not a mere bailee, but he loses his own money, and cannot therefore call upon the public to bear the loss. These views all lead obviously to the enforcement of an exceedingly strict liability." Section 301: "But another view, less stringent, and, in the opinion of the writer, more consonant with reason and justice, has also met with favor, although the cases which maintain it are few. By this view, the officer is regarded as standing in the position of a bailee for hire, and 'bound, *virtute officii*, to exercise good faith and reasonable skill and diligence in the discharge of his trust, or, in other words, to bring to its discharge that prudence, caution, and attention which careful men usually exercise in the management of their own affairs,' but 'not responsible for any loss occurring without any fault on his part.' The statute may, of course, impose, or the officer may himself assume, a more onerous responsibility; but, in the contemplation of this theory, a greater liability does not result from the simple undertaking to faithfully discharge the duties of the office." The authorities in support of these respective theories are cited in the notes to the appropriate sections.

In 1844, the Supreme Court of the United States decided the case of U. S. v. Prescott, 3 How. 578. Prescott was a receiver of public moneys. The action was on his bond for failing to pay over public moneys received by him. "The defense pleaded was that the sum not paid over by the defendant, Prescott, and for which the action was brought, had been feloniously stolen, taken, and carried away from his possession by some person or persons unknown to him, and without any fault or negligence on his part; and he avers that he used ordinary care and diligence in keeping said money, and preventing it from being stolen." The court held that those facts constituted no defense, and further held that "the obligation to keep safely the public money is absolute, without any condition, express or implied; and nothing but the payment of it, when required, can discharge the bond." The court further held that such a defense was in violation of public policy. So that we may say U. S. v. Prescott was decided upon a strict construction of the terms of the bond, and upon questions of public policy. The decision therefore embraced the first two theories given by Mechem, *supra*.

The Supreme Court of the United States followed the rule or rules of law announced in U. S. v. Prescott, from 1844, when that case was decided, in U. S. v. Morgan, 11 How. 154; U. S. v. Dashiel, 4 Wall. 182; U. S. v. Kechler, 9 Wall. 83, and perhaps other cases, until 1872, when the case of U. S. v. Thomas, 15 Wall. 337, was decided. In this last-named case the supreme court evidently departed from the stringent rule announced in U. S. v. Prescott, that nothing but the payment of the money, when required, will discharge the bond. After examining and commenting on U. S. v. Prescott, *supra*, and the cases following it, the court, in U. S. v. Thomas, says: "It appears from them all (except, perhaps, the New York case) that the official bond is regarded as laying the foundation of a more stringent responsibility upon collectors and receivers of public moneys. It is referred to as a special contract, by which they assume additional obligations with regard to the safe-keeping and payment of those moneys, and as an indication of the policy of the law with regard to the nature of their responsibility. But, as before remarked, the decisions themselves do not go the length of making them liable in cases of overruling necessity. On the contrary, in the last reported case on the subject, that of Bevans v. U. S., 13 Wall. 56, Mr. Justice Strong, delivering the opinion of this court, says: 'It may be a grave question whether the forcible taking of money belonging to the United States, from the possession of one of her officers or agents lawfully holding it, by a government of paramount force, which at the time was usurping the authority of the rightful government, and compelling obedience to itself exclusively throughout a State, would not work a discharge of such officers or agents, if they were entirely free from fault, though they had given bond to pay the money to the United States.' These observations show that the particular question raised in this case has been reserved by the court after its most mature consideration of the subject. So much stress has, in almost every case, been laid upon the bond as forming, either directly or indirectly, the basis of a new rule of responsibility, that it seems especially important to ascertain what are the legal obligations that spring from such an instrument. The learned judges in the great generality of the remarks made in some of the cases referred to, with regard to the liability of a receiving officer, and especially of his sureties, by virtue of his bond, have evidently overlooked what we conceive to be a very important and vital distinction between an absolute agreement to do a thing and a condition to do the same thing, inserted in a bond. In the latter case, the obligor, in order to avoid the forfeiture of his obligation, is not bound at all events to perform the condition, but is excused from its performance when prevented by the law or by an overruling necessity. And this distinction, we think, affords a solution to the question involved in this case. * * * The condition of an official bond is collateral to the obligation or penalty. It is not based on a prior debt, nor is it evidence of a debt; and the duty secured thereby does not become a debt until default be made on the part of the principal. Until then, as we have seen, he is a bailee, though a bailee resting under special obligations. The condition of his bond is not to pay a debt, but to perform a duty about and respecting certain specific property which is not his, and which he cannot use for his own purposes." In U. S. v. Thomas, it may safely be said we think, that the court decided that the public officer in such cases is a bailee of the public funds, and not a debtor to the public, and also that the bond is conditional, and that the officer is not compelled to pay it in any event, and under all circumstances, as

held in U. S. v. Prescott and other cases. It is worthy of remark that, while Mr. Justice Miller dissented from the opinion in U. S. v. Thomas, he distinctly says he did not approve of the doctrine announced in U. S. v. Prescott and the cases which followed it. He says: "When the case of U. S. v. Dashiel came before the court, I was not satisfied with the doctrine of the former cases. I do not believe now that, on sound principle, the bond should be construed to extend the obligation of the depositary beyond what the law imposes upon him, though it may contain words of express promise to pay over the money. I think the true construction of such a promise is to pay when the law would require it of the receiver if no bond had been given, the object of taking the bond being to obtain sureties for the performance of that obligation. Nor do I believe that prior to these decisions there was any principle of public policy recognized by the courts, or imposed by the law, which made a depositary of the public money liable for it when it had been lost or destroyed without any fault of negligence or fraud on his part, and when he had faithfully discharged his duty in regard to its custody and safekeeping." And says, further: "If the opinion or judgment of the court were based upon a frank overruling of those cases, and an abandonment of the doctrines on which they rest, I should acquiesce."

A number of the courts of the country have held to the doctrine embraced in the third theory given by Mechem, as shown above, namely, that the officer in such cases is the debtor of the public, and therefore cannot be excused for loss of public funds for any reason. These authorities are cited in the notes to section 300, Mechem, *supra*. As our statute expressly prohibits the use of the public funds, directly or indirectly, by the city treasurer, we cannot subscribe to the doctrine that he is a debtor to the public. We think such a theory is illogical, and not supported by the best authorities. We think in such cases the officer is a bailee of the funds. To hold that the moneys received by him are his own, and that he may so treat them on the theory that he is only a debtor of the public, would, in our opinion, lead to a most vicious abuse of public trust, encourage malfeasance in office and misuse of the public funds.

This brings us to the consideration of the rule embraced in Mechem's fourth view, that the "officer is regarded as standing in the position of a bailee for hire, and 'bound, *virtute officii*, to exercise good faith and reasonable skill and diligence in the discharge of his trust, or, in other words, to bring to its discharge that prudence, caution, and attention which careful men usually exercise in the management of their own affairs,' but 'not responsible for any loss occuring without any fault on his part.'" This theory is approved by Mechem. It is, in our opinion, supported fully by U. S. v. Thomas and the dissenting opinion of Mr. Justice Miller in that case. See also Cumberland Co. v. Pennell, 69 Me. 357. In State v. Copeland, (Tenn. Sup.), 34 S. W. Rep. 427 (a case very similar to the one at bar).

DISCOVERY IN AID OF EXECUTION AT LAW.

In some of the States there are neither statutory provisions enabling a judgment creditor to file a bill in equity for discovery of assets in aid of execution at law, nor summary remedies, such as proceedings supplementary to execution, by which the same relief is obtained. And even where such summary remedies exist, it has been held that they do not take away the right of the creditor, whose execution has been returned unsatisfied,[1] to file his bill to discover assets in aid of the execution. It becomes, then, important to inquire how far equity will aid the creditor in this respect, independently of statutory provisions. There are several early English cases which seem to establish the proposition that equity will compel a judgment debtor, after an execution against him has been returned unsatisfied, to discover any tangible property which he may have transferred or secreted in the hands of some third person, with intent to hinder and delay creditors.[2] Another line of early English cases decides that a judgment creditor, after return of his execution *nulla bona*, may maintain a bill to discover choses in action which the debtor has transferred to third persons with intent to hinder and delay creditors.[3] The authority of these decisions has been weakened by several later cases which hold that equity will not compel a discovery of fraudulently transferred choses in action, and set aside the transfer, because the creditor would thereby be placed in no better position; since he could not reach the choses in action by execution at law, if the transfer were in fact set aside, and the court had no power to transfer them to him in satisfaction of his debt.[4] These reasons could hardly be said to exist at the present day, at least in America, as the creditor may reach choses by attachment; and the courts of equity constantly exercise the power of taking possession of fraudulently transferred choses, through a receiver, and applying them to the satisfaction of judgments against the transferror. In America, a number of early cases decide that a bill will lie for the discovery of

[1] Feldenheimer v. Tressel, 6 Dak. 265, 43 N. W. Rep. 94.

[2] Protector v. Lord Lumley, Hard. 22; Taylor v. Hill, Eq. Cas. Abr. 132, pl. 15; Leith v. Pope, 2 Dick. 575; Shirley v. Watts, 3 Atk. 300; Mountford v. Taylor, 6 Ves. Jr. 788.

[3] Smither v. Lewis, Vern. 398; Balch v. Wastall, 1 P. Wms. 445; Taylor v. Jones, 2 Atk. 599; King v. Dupine, 2 Atk. 599*n*.; Horn v. Horn, Amb. 79; Partridge v. Gopp, Amb. 596.

[4] Edgell v. Haywood, 3 Atk. 352; Dundas v. Dutens, 1 Ves. Jr. 196; Cailland v. Estwick. 2 Anst. 381; Rider v. Kidder, 10 Ves. Jr. 360; McCarthy v. Goold, 1 Ball. & Beatty, 387; Grogan v. Cooke, 2 Ball & Beatty, 387; Grogan v. Cooke, 2 Ball & Beatty, 232.

choses in the hands of one to whom they were fraudulently transferred by an execution debtor.[5] And a large number of decisions make no distinction between these cases and those in which no fraudulent transfer of the choses is alleged; holding that the creditor has a right, whenever his execution has been returned unsatisfied, to come into a court of equity and require the debtor to discover any stock, money, bonds, or other choses in action, in his own hands, or secreted with third persons, from which the execution may be satisfied; and that he has this right independently of any statutory provisions.[6] Another class of decisions restrict this jurisdiction to cases in which it is alleged that the choses were fraudulently transferred or deposited with third persons, or that they are of a kind that can only be reached in equity, such as an equity of redemption, or property held in trust.[7] It can hardly be doubted that in America the rule is firmly established that a court of equity will vacate a fraudulent transfer of choses in action at the suit of a judgment creditor, whose execution has been returned unsatisfied. The English cases, already referred to, which maintain a different rule, have been frequently cited in support of the proposition that a bill will not lie against the debtor alone to compel him to discover choses in his own hands, from which the execution may be satisfied, but I have found no case in which it has been held that such a bill would not lie against the debtor, and his fraudulent transferee, or a trustee having in his hands equitable assets of the debtor. Practically, then, the only question we have to deal with, is whether equity will entertain a bill against the judgment debtor alone to compel him to discover assets of any kind, tangible or intangible, which may be applied to the satisfaction of the execution. So far as tangible effects are concerned there was, before the abolition of imprisonment for debt, little occasion to call on the debtor for a discovery in equity, because the creditor could levy his execution on the goods, if they were accessible; and if they were not accessible, he could seize the body of his debtor in execution, and hold him until the goods were produced, or the execution satisfied. In the summary proceeding at law supplementary to execution, and in others of the same nature in the different States, the debtor is called upon to make a full disclosure of all property which he may have, tangible or intangible, from which the execution may be satisfied; but there is not of necessity any reference to any particular property which the debtor may have in his own hands, or in the hands of others. I am not aware of any case in which a bill in equity for discovery has been allowed so wide a scope. It seems absolutely necessary that the bill shall allege some particular property which the debtor is endeavoring, in some way, to keep beyond the reach of the execution; otherwise, it will be condemned as a "fishing bill."[8] The judgment creditor cannot come into a court of equity and institute a kind of involuntary bankruptcy proceeding against the debtor, requiring himto file an inventory of his effects of all kinds. But it is not easy to perceive any sound reason why the judgment creditor should not be entertained when he comes into court alleging that the debtor has certain specified property, either choses in action, money, stocks, and bonds, or tangible property of a kind easily concealed, such as jewelry and precious stones, which he is secreting in his own hands, or has deposited with persons unknown to the plaintiff, for the purpose of evading an execution, or other process by which they might be reached for the satisfaction of the judgment. Especially ought such a bill to be entertained in those jurisdictions where no statutory provision exists under which a similar relief might be obtained. It has been held that the effect of the statutes abolishing imprisonment for debt is to originate a jurisdiction in equity to compel the discovery of choses in action, and their ap-

[5] Hendricks v. Johnson, 2 Johns. Ch. (N. Y.) 283; Bayard v. Hoffman, 4 Johns. Ch. (N. Y.) 450; Hadden v. Spader, 20 Johns. (N. Y.) 554; Austin v. Dickey, 3 Edw. Ch. (N. Y.) 378; Trego v. Skinner, 42 Md. 426; Williams v. Hubbard, Walk. Ch. (Mich.) 28; Lathrop v. McBurney, 71 Ga. 815.

[6] Edmeston v. Lyde, 1 Paige Ch. (N. Y.) 637; Leroy v. Rogers, 3 Paige Ch. (N. Y.) 234; Meiers v. Turnpike Co., 11 Ohio, 273; Cadwallader v. Society, 11 Ohio, 292; Lammon v. Clark, 4 McLean (C. C.), 18; Bay State Iron Co. v. Goodall, 39 N. H. 223; Lewis v. Shainwald, 48 Fed. Rep. 492; Kountze v. Cargill (Tex.), 22 S. W. Rep. 227, reversed *Id.* 1015.

[7] Donovan v. Finn, Hopk. Ch. (N. Y.) 59; Erwin v. Oldham, 6 Yerg. (Tenn.) 185; Ewing v. Cantrell, Meigs (Tenn.), 364; Graham v. Merrill, 5 Coldw. (Tenn.) 633; Creswell v. Smith, 2 Tenn. Ch. 416, reversed 8 Lea (Tenn.), 688; Verdier v. Foster, 4 Rich. Eq. (S. C.) 227; Webb v. Jones, 13 Lea (Tenn.), 200.

[8] Such was the case in Verdier v. Foster, 4 Rich. Eq. (S. C.) 227; Kountze v. Cargill (Tex.), 22 S. W. Rep. 1015; and Webb v. Jones, 13 Lea (Tenn.), 200.

plication to the satisfaction of executions which have been returned *nulla bona*.[9] Without such a power in the courts of equity, and with no means of putting the debtor to his oath at law in supplementary proceedings, and the like, the debtor might convert all of his visible, tangible, property into stocks and bonds, and defy his creditors. What rational objection to the exercise of such a power can be urged? Such a proceeding in equity cannot be condemned as an unauthorized inquisition into a man's private affairs. A debtor who is secreting his property from the officers of the law in order to avoid the just demands of his creditors, is not entitled to favors in a court of equity. The homestead and exemption laws protect poor debtors; with these exceptions it is a violation of public policy to create a well-defined beneficial interest, legal or equitable, in property, real or personal, which can be enjoyed by an insolvent debtor, free from liability for the payment of his debts. This power is no more than that which was exercised by the English Court of Chancery in Mountford v. Taylor[10] and Leith v. Pope,[11] nearly one hundred and fifty years ago; cases which are in no wise in conflict with Edgell v. Haywood and Dundas v. Dutens, or any other of the later English decisions, because they (the former) did not involve any question as to the right of a judgment creditor to reach choses in action in equity—they were suits to compel the discovery of tangible property alleged to have been secreted or disposed of by the defendants. The recent case of Lewis v. Shainwald,[12] decided by the Circuit Court of the United States for the District of California, well illustrates the jurisdiction which is contended for here. The complainant, after setting forth that he had recovered judgment at law against the defendant for a large sum of money, that execution had been issued and a return of *nulla bona* made thereon, averred that a short time before the rendition of the judgment and during the pendency of the action, the defendant had disposed of and converted into cash real property to the amount of $20,000; that since the rendition of the judgment he had secretly transferred a large part of his property, and had secreted the remainder; that he now has property to the value of $90,000, which the complainant has been unable to reach by execution; that he intends and is about to convert into cash all of his property, and to depart, taking it with him, beyond the jurisdiction of the court; and that all these acts and steps have been committed, taken, and proposed with the declared purpose of so "fixing" his property that it cannot be seized to satisfy the judgment, and to defraud the complainant of the money due under it. There was a demurrer to the bill, which was overruled by the court below, and the circuit court, affirming this order, said: "Here is set forth the fraud which the complainant is seeking to unveil; and if the alleged state of facts exists, he is entitled to apply the funds of the respondent wherever they are, to the satisfaction of the judgment. The fact that the complainant is unable to describe and locate the property and funds of the respondent ought not to make it impossible to bring his cause within the jurisdiction of a court of equity, for under existing laws it is possible for a party to hold property in such a manner that only by a discovery can another be able to locate or describe it. If, in a case of this kind, a complainant were not entitled to a discovery, it would be possible for a debtor to conceal his property, or to convert it into money and put it in his pocket, and so evade a judgment. The arm of the court of equity would certainly be very short if it could not reach the respondent in such a case, although the complainant would be unable to describe the property or identify the money. In the nature of things it is impossible to identify the money. But if this respondent has in his possession the $20,000 which he is alleged to have received for that portion of his property which he has sold, and other property as well, he is bound to discover it, and yield it up, that it may be applied to the satisfaction of the judgment." It is to be noted that the bill in this case specified no particular fraudulent transfer, no particular property secreted by the defendant, and no third person assisting the defendant in hindering and delaying the plaintiff. Yet, notwithstanding the very general allegations of the bill, the court held that the complainant was entitled to a dis-

[9] Hook v. Fentress, Phil. Eq. (N. C.) 229; Powell v. Howell, 63 N. C. 283.
[10] 6 Ves. Jr. 788.
[11] 2 Dick. 575.
[12] 48 Fed. Rep. 492.

covery. It is just such a case in which the creditor requires a discovery. He has no need for a discovery where the debtor executes a wholesale transfer of his property and puts it on record. The deed describes and fixes the property, and the creditor has only to fill his bill attacking that deed. But the sudden disappearance of money, stocks, bonds, and personal chattels as soon as judgment has been obtained, without any transfer of record, and nothing to indicate what course the debtor's effects have taken, is the experience of every practitioner of the law; and in such a case it is impossible for the plaintiff to make other than general charges in the bill. To require him to inventory in his bill the property secreted or transferred, or to name some person with whom the property had been deposited, would, practically, be to deny him relief. The extension of this branch of equity jurisdiction to the limits fixed by this case can be attended with no inconvenience or injustice, and must exercise a salutary restraint upon debtors who undertake to cheat the creditor out of the benefit of his judgment. No objection to it upon grounds of public policy can be urged that would not apply with greater force to the exceedingly summary procedure against the debtor by supplementary proceedings, examination before commissioners, and the like.

Washington, D. C. CHAPMAN W. MAUPIN.

CARRIERS OF PASSENGERS — ROUND TRIP TICKETS—CONDITIONS.

LOUISVILLE, N. A. & C. RY. CO. v. WRIGHT.

Appellate Court of Indiana, June 11, 1897.

1. A round-trip ticket sold at a reduced rate, contained a condition that it was not valid for return unless signed by the purchaser on the day of the return, in the presence of defendant's agent, and witnessed by him; and on the face thereof was a notice to the purchaser to the effect that the return part of the ticket must be stamped, and the purchaser's signature witnessed by such agent before it would be honored for passage. It appeared that, though defendant kept its office and station open, and its agent on duty, from 7 A. M. to 7 P. M., it maintained no night office at the place to which the ticket in question read; that the purchaser did not apply at defendant's office to have the ticket stamped and his signature witnessed by the agent until after the office was closed for the day; and that on the return trip he tendered for his passage the ticket unsigned and unstamped, which was refused by the conductor. Held, that such ticket gave the purchaser no right to a return passage until he had complied with such agreement.

2. A regulation requiring the station agent at a village of less than 50 inhabitants to keep his office open for business only from 7 A. M. to 7 P. M. each day is reasonable.

ROBINSON, J.: Appellee brought this action to recover damages for being wrongfully ejected from one of appellant's trains. Issues were formed, and the case was submitted to the court, upon an agreed state of facts. The court found for appellee in the sum of $100, and rendered judgment for that amount. The facts, as agreed upon, are substantially as follows: On the 4th day of May, 1895, the appellee purchased a round-trip ticket from the appellant, from La Fayette, Ind., to Paisley, Ind. That the ticket provided that it was good for one first-class passage to Paisley, Ind., and return, when stamped as indicated on the back thereof; and that as the ticket was sold at a reduced rate, it was not good for stop-over, and was good for going passage only on the date of sale and returning to the date canceled in the margin of the ticket; and that the ticket was not valid for return passage unless signed by the original purchaser on the day of departure returning, in the presence of the authorized agent of the Louisville, New Albany & Chicago Railway at Paisley, Ind., and witnessed by him. On the face of the ticket there was also a notice to the purchaser thereof to the effect that the return part of the ticket must be stamped, and the purchaser's signature witnessed, by the agent of the Louisville, New Albany & Chicago Railway, at Paisley, Ind., before it would be honored for passage. That the appellee was carried on the appellant's train from La Fayette, Ind., to Paisley, Ind., on said date, and that said ticket was good returning until the 9th day of May, 1895. That the appellee went through from Paisley to the city of Chicago on the 4th day of May, 1895, and on the 6th day of May, 1895, he came from the city of Chicago, on appellant's train to Paisley, reaching there at about the hour of 10:15 P. M. That he got off of said train, and went to appellant's ticket office at said Paisley, for the purpose of signing said ticket in the presence of appellant's agent, and having his signature witnessed by the agent as provided on said ticket; but that the office of the appellant was closed, and the appellee was unable to find appellant's agent, though he made search for him. That appellee went to the office a sufficient length of time before the train on which he came left Paisley to sign his name, and have the ticket duly attested, according to its provision, but was unable to do so because the office was closed, and there was no agent of the appellant there. That, after going to the appellant's office, appellee got on appellant's train at Paisley, and presented said ticket to the conductor of the train, who declined to receive the same, because the same was not signed by the appellee, as required by its provisions, and the signature was not witnessed, as required by the conditions of said ticket; and the appellant refused to accept the ticket for passage, and ejected the appellee from the train at the town of Lowell. That on the 4th day of May, and on the 6th day

of May, at the time said ticket was purchased and sought to be used, the station of Paisley was a regular stopping station for said train, leaving Chicago at 8:30 P. M., upon which the appellee came, and arrived at said Paisley at about the hour of 10:15 P. M., and that it stopped at Paisley both for the purpose of receiving and discharging passengers. That the ticket was a special ticket, and issued at a reduced rate below the regular rate, in consideration of the terms of the contract therein prescribed. That the appellee did not obtain the stamp of the agent of the appellant at Paisley before returning; nor did he have the agent witness his signature on the back of the ticket, before he entered the train of appellant on his return passage; nor did he apply to the agent at Paisley, nor to the office of the appellant at Paisley, until the office was closed for the day, nor until after the arrival of the train at Paisley on which he desired to take passage. That he got off the train when it reached Paisley, expecting to obtain the agent's stamp at that hour, and have his signature duly attested by the agent. That on said 6th day of May, 1895, the appellant had and kept its office and station open at said Paisley, and had its agent there ready to do and perform all duties from the hour of 7 A. M. of said day until the hour of 7 P. M. of said day. That Paisley is a station with a population of less than 50 people, and that the appellant did not have at or before said time a night agent or a night office at said point, nor was said station a night station at said time; and appellant did not have nor maintain either a night office or a night agent there at or before said time, but had an agent on said day from 7 A. M. to 7 P. M. ready to attest signatures and do all other business of the appellant at said station. That the appellee knew of the condition on the ticket that it would not be valid for return passage unless signed by the original purchaser on the day of departure for returning, in the presence of the authorized agent of the appellant at Paisley, and witnessed by said agent, before he got on said train returning. That the appellee got off the train at Paisley for the purpose of having the ticket signed and stamped. That the same was not signed and stamped, because the agent of the appellant was not there, and because said appellant had no night agent there; and that, therefore, the appellee tendered the ticket unsigned and unstamped to the conductor of the appellant, who refused to receive the same, and demanded fare of appellee from Paisley to La Fayette, which fare the appellee declined to pay; and that the conductor of such train assigned as his reasons for not receiving the ticket that it was not stamped, and the signature of the appellee was not witnessed, by the agent of the appellant at Paisley, as required by its conditions; and that the appellee told the conductor that he had gotten off at Paisley for the purpose of signing said ticket, and having the same witnessed, but that the office of the appellant was closed, and the agent was not there.

In many early decisions it was held that a railroad ticket was no more than evidence that the holder has paid the passage money entitling him to be carried from one point to another, and that in effect it was no more than a receipt for the passage money so paid. But, by the later adjudications, such a ticket is held to be a contract between the purchaser and the railroad company. Car Co. v. Taylor, 65 Ind. 153; Railway Co. v. Fitzgerald, 47 Ind. 79. Thus in Callaway v. Mellett (Ind. App.), 44 N. E. Rep. 198, this court said: "We must therefore give to a ticket a more extensive signification than a mere receipt or voucher. * * * Where it is so drafted as to impose an affirmative obligation upon either party, it amounts to a contract, and must be construed, and the rights and obligations of the parties thereunder determined, by the law of contracts in general." Although the appellee had not signed the ticket when he first purchased it, yet he accepted it, and had used a part of the ticket; and from the agreed facts it appears that he knew that the return part of it must be signed and witnessed before using it.

The difficult question to be determined in this case is whether the appellee is excused from the performance of the conditions precedent by the failure of the appellant to have its office at Paisley open when appellee went to sign the return ticket and have it witnessed and stamped as required. The railroad company, in consideration of the reduced fare, had a right to attach reasonable conditions which the purchaser should comply with before using the ticket. Ordinarily, appellee would have purchased a ticket La Fayette to Paisley, and then bought a ticket at Paisley for the return trip. There was nothing unreasonable in requiring that appellee should present the return coupon to the appellant's agent, and sign the ticket in the presence of the agent before presenting it to the company for passage. The contract of carriage, with the conditions, was a valid and binding agreement between the company and the purchaser of the ticket. He had not simply contracted with the company for passage from La Fayette to Paisley and return, but he had agreed to present the ticket to the appellant's agent at Paisley, and sign it in the presence of the company's agent. This was a condition precedent, and until it had been complied with, or an excuse shown for non-compliance, the ticket gave him no right to a return passage. Such a condition is reasonable, and it is the duty of the purchaser to read it, and comply with its terms. Bowers v. Railroad Co., 158 Pa. St. 302, 27 Atl. Rep. 893. It has been held that the right of the holder to ride upon such a ticket does not depend upon his being the identical person who purchased it, but upon its complying with this condition precedent, and that a conductor has no power to determine his right to passage unless the condition has been performed. Thus, in Mosher v. Railroad Co., 127 U. S. 390, 8 S. C. Rep. 1324, it is said: "The conductor of the defendant's train, upon the plaintiff's presenting a ticket bearing no stamp of the agent at Hot Springs, had no authority to

waive any condition of the contract, to dispense with the want of such stamp to inquire into the previous circumstances, or to permit him to travel on the train. It would be inconsistent alike with the express terms of the contract of the parties, and with the proper performance of the duties of the conductor, in examining the tickets of other passengers, and in conducting his train with due regard to speed and safety, that he should undertake to determine, from oral statements of the passenger or other evidence, facts alleged to have taken place before the beginning of the return trip, and as to which the contract on the face of the ticket made the stamp of the agent of the Hot Springs Railroad Company at Hot Springs the only and conclusive proof." See Boylan v. Railroad Co., 132 U. S. 146, 10 S. C. Rep. 50. In Railroad Co. v. Stockdale (Md.), 34 Atl. Rep. 880, a passenger was sold an excursion ticket by the company which, by its terms was required to be stamped for return passage by the secretary of a camp-meeting association. When the ticket was sold, the camp meeting had closed, and the secretary had gone away, but this fact was not known to the agent who sold the ticket. There was an agreement between the association and the railroad company by which excursion tickets were to be sold at a reduced rate. After an unsuccessful effort to have the ticket stamped, the passenger tendered the unstamped ticket for return passage, and, on refusal of the conductor to accept it, refused to pay fare, and was ejected from the train. It was held he could not recover.

The ticket in the case at bar is not limited to any particular train, and on its face would be good on any train scheduled to stop at the points named. If appellee, when he purchased the ticket, had taken passage on a train not scheduled to stop at Paisley, and had been ejected from the train before reaching that place, or had been carried beyond it, he would have had no right of action against the company. He would be held bound to know whether the train on which he had taken passage would stop at the station for which he purchased the ticket. Railroad Co. v. Bills, 104 Ind. 13, 3 N. E. Rep. 611; Railway Co. v. Swarthout, 67 Ind. 567; Railway Co. v. Hatton, 60 Ind. 12; Railway Co. v. Applewhite, 52 Ind. 540; Railway Co. v. Lightcap, 7 Ind. App. 249, 34 N. E. Rep. 243. In Railway Co. v. Applewhite, *supra*, the court said: "It is the duty of a party going upon a railroad train to inform himself when, where, and how he can go or stop according to the regulations of the railroad company, and if he make a mistake, not induced by the company, and against which ordinary diligence and care would have protected him, he has no remedy for the consequences against the company." In Railroad Co. v. Lightcap, *supra*, it is said: "Doubtless, a railway company not only has the right, but it is its duty to operate its trains in accordance with established rules and regulations, and upon these it is not bound to infringe in order to accommodate a single passenger. On the other hand, it is the duty of one about to become a passenger to use reasonable diligence in acquainting himself with the rules and regulations of the company respecting the time when, the place where, and the circumstances under which a train upon which he desires to travel may go or stop, according to the company's rules and regulations; and if, by neglecting to do so, he makes a mistake, he can have no remedy, if he be carried past his destination or ejected before getting there." Where a passenger could have purchased a round-trip ticket at the station where he took the train, the fact that there was no ticket station at his point of destination, thus preventing him from buying a ticket home, does not excuse his refusal to pay the extra 25 cents. Snellbaker v. Railroad Co. (Ky.), 23 S. W. Rep. 509. It has been held that a discrimination by a railroad company in its rates in favor of passengers who purchase tickets before entering the cars is a reasonable regulation, and that, to justify such a discrimination, proper facilities should be afforded by the company for the procurement of a ticket before the passenger goes upon the train. Railway Co. v. Mays, 4 Ind. App. 413, 30 N. E. Rep. 1106. If a company advertise to carry passengers purchasing tickets at a less rate than the regular fare, it is not bound to keep its ticket office at a particular station open after the time when a train of cars is advertised to leave that station; and if a person arrives after that time, and enters the car without a ticket, he may, in accordance with a regulation of the company, be expelled for refusing to pay full fare, although he was unable to procure a ticket in consequence of the ticket office being closed. Swan v. Railroad Co., 132 Mass. 116; State v. Hungerford, 39 Minn. 6, 38 N. W. Rep. 628; Railroad Co. v. South, 43 Ill. 176; Railroad Co. v. Brisbane, 24 Ill. App. 463; Everett v. Railway Co., 69 Iowa, 15, 28 N. W. Rep. 410. A passenger paid the price of a ticket from Detroit to Quebec and return, but, by mistake of the agent, was given a ticket both parts of which were stamped for passage from Detroit to Quebec. He discovered the mistake when about to enter the train, and thereupon consulted a person temporarily in charge of the station office, during the absence of the agent. This person said he had no authority to correct the mistake, but thought the matter would be all right. The passenger went to Quebec, and spent several weeks, but on his way home was ejected from the train. It was held that he was bound to know that the conductor had a right to refuse the ticket, and therefore, in boarding the train, was guilty of negligence barring a recovery in tort, and rendering his damages merely nominal if his action is on contract. Pouilin v. Railway Co., 3 C. C. A. 23, 52 Fed. Rep. 197, and cases cited. It is held that the penalty prescribed by statute for failure to note upon a blackboard in the depot, at a station where there is a telegraph office, the time at which a schedule train will arrive, is not recoverable for failure of a company to note the facts in that respect as to a train scheduled to arrive at such a station during the night, when the

company does not keep its telegraph office open. Terre Haute & I. R. Co. v. State, 13 Ind. App. 529, 41 N. E. Rep. 952. And, under a statute providing a penalty for failure to reasonably transmit a message, the telegraph company may regulate, reasonably, its office hours, according to the requirements of the business at the various points where it holds itself out for public service; and the penalty is not incurred unless there is a failure to receive and transmit the message during the usual office hours, both at the point where the message is received and that to which it is transmitted. Telegraph Co. v. Harding, 103 Ind. 505, 3 N. E. Rep. 172.

While the two cases last cited arose under penal statutes, yet the reasoning in some respects is applicable to the case at bar. In the operation of its road, the appellant had the same right to require that certain of its offices should be open for the transaction of business only during certain hours that it had to make rules and regulations for the running of its trains. If a passenger is bound to know whether a train on which he takes passage will stop at the station to which his ticket reads, by the same reasoning he would be bound to know whether a certain station at which he desires to tranact business will be open at all hours. We think a regulation of the company that a station at a village of less than 50 inhabitants is open for the transaction of business from 7 A. M. to 7 P. M. each day is reasonable, and that the failure of the company to have an agent at that point at other hours did not excuse the appellee from performing the only condition required of him in consideration of the reduced fare. The facts show that the ticket was a special ticket, and was secured at a reduced rate below the regular rate, in consideration of the terms of the contract therein prescribed. It also appears that, on the day the ticket was presented, the appellant's office at Paisley was open from 7 A. M. to 7 P. M., and an agent was present to transact the business of the company. When appellee purchased the ticket, he must be held to have known that it could be signed and stamped for return only during the hours at which the company kept an agent at its office at Paisley. Such a requirement might be an inconvenience, but it was not unreasonable. The contract required that he sign the ticket, and have his signature witnessed, on the day of departure returning. For 12 hours on that day appellant had an agent at its office to do that and its other work. With this opportunity, we think the failure to have the ticket properly signed and witnessed must rest with appellee. Appellant gave him reasonable facilities to comply with the conditions imposed, and these conditions could have been complied with by the use of due diligence on the part of appellee. It follows from what has been said that the demurrer to the second paragraph of answer should have been overruled. Judgment reversed.

NOTE.—A railroad ticket is evidence of the terms and regulations on which the company agrees to carry, and, when a passenger has accepted the ticket, its terms constitute the contract between the company and the passenger. Callaway v. Mellett, 15 Ind. App. 366, 44 N. E. Rep. 198. In construing a special contract embodied in a railroad ticket and limiting the purchaser's rights, language of uncertain or doubtful meaning should generally be taken in its strongest sense against the company by which the ticket was issued and sold and in favor of the purchaser. Georgia Railroad & B. Co. v. Clarke, 97 Ga. 706, 25 S. E. Rep. 368. In consideration of issuing a round trip ticket at a reduced rate, the carrier may insert as a condition of the ticket that it shall not be good for a return passage unless the ticket holder shall identify himself as the original purchaser to the satisfaction of the carrier's agent at the point of destination, and unless the ticket is signed and stamped by said agent. In the absence of fraud or deception on the part of the carrier's agent in selling such a ticket, the assent of a person buying and using such a ticket to such conditions will be conclusively presumed, although he may not have signed the ticket; and the ticket holder may be ejected from the train for failure to comply with such a condition, though he may offer proof of identification to the conductor. Abram v. Gulf, C. & S. F. Railway Co., 83 Tex. 61, 18 S. W. Rep. 321. A stipulation in a ticket, sold as good for 30 days, that the purchaser shall have himself identified as such at the terminal point of his journey, and that the ticket shall be good 15 days only after date of identification, is valid and binding. Rawitsky v. Louisville & N. Railway Co., 40 La. Ann. 47, 3 South. Rep. 387. Where a person bought a return ticket on which was a printed condition that he should be identified to, and the ticket stamped by, the agent at the other end of the route, but, failing to notice this, started on his return journey, and was forcibly, but civilly, ejected on his refusal to pay fare, it was held that he had no cause of action. Moses v. East Tennessee, V. & G. Railway Co, 73 Ga. 356. Plaintiff purchased a return ticket from Lansing to Chicago, sold at a reduced rate on condition,—printed on the face of the ticket and signed by plaintiff—that it should not be good for return passage unless stamped by the company's ticket agent in Chicago, and there signed again by plaintiff as the original purchaser. A description of plaintiff as well as his signature was indorsed on the ticket to aid the agent in identifying him. Plaintiff failed to have the ticket stamped, or to sign it in Chicago, and, refusing to pay his fare on the return trip, was ejected from the train. Held, that having failed to comply with the reasonable conditions of the contract he could not ride on the ticket' nor recover for his ejection. Edwards v. Lake Shore & M. S. Railway Co., 81 Mich. 364, 45 N. W. Rep. 827. Where a passenger, having a ticket providing that the return coupon thereof would not be honored unless the passenger was identified by the agent at his destination, before returning, and the coupon witnessed and stamped by him, presented the coupon to the agent for the purpose of identification at the same time requesting a sleeping car ticket, and the agent took the coupon to the rear of his office, and, returning with it, handed it to the passenger folded up with the sleeping car ticket, the fact that the agent had omitted to stamp the coupon did not excuse the company from liability for ejecting the passenger from the train on presentation of the coupon unstamped, the passenger not having learned of the agent's omission till he had taken the train. Northern Pac. Rail-

way Co. v. Pauson, 70 Fed. Rep. 585, 17 C. C. A. 287. So where the holder of such a ticket presented it to the agent at his destination, who returned it without stamping, telling the purchaser it was all right, the company issuing the ticket was liable for the expulsion of the purchaser from one of its trains on the return trip because the ticket was unstamped, although the conditions printed thereon provided that the selling company acted only as agent of the connecting carrier over whose line part of the holder's route lay, and was not liable beyond its own line, and that no agent of any line could modify its conditions; and the agent at the purchaser's destination to whom the ticket was presented to be stamped was an employee of the connecting line. Gulf, C. & S. F. Railway Co. v. St. John (Tex. Civ. App.), 35 S. W. Rep. 501. Defendant sold plaintiff a ticket to a point beyond its own line, providing that in selling the ticket defendant acted only as agent of the carrier beyond its own line, and was not responsible beyond that point; that the ticket was not good for a return passage, unless the holder identified himself at the office of the second carrier, and unless the ticket was properly stamped, etc.; that plaintiff should identify himself whenever required by conductors or other agents of the road; and that no agent had authority to alter the terms of the contract. Plaintiff presented himself for identification at the required place, and at a proper time before the departure of trains, but no agent was present to identify him or stamp the ticket. After reaching defendant's road, plaintiff was ejected because his ticket was not properly stamped, although he offered to identify himself to the conductor. Held, that defendant was under no obligations to accept the ticket until plaintiff had it properly stamped. Mosher v. St. Louis, I. M. & S. Railway Co., 8 Sup. Ct. Rep. 1324. Where the agent at the terminal point wrongfully refused to sign and stamp the return coupons, it was held that he did not act as sole agent for the company issuing the ticket, but for all the connecting lines, and his refusal to stamp the ticket would not render the company issuing the ticket liable. Bethea v. Northeastern Railway Co., 26 S. Car. 91, 1 S, E. Rep. 372. Where a ticket agent wrongfully refused to stamp the return coupon of a round trip ticket, pronouncing it "No good," the railroad company is liable for the ejection of the passenger by the conductor, who, in obedience to the company's rules, refused to accept the unstamped ticket. Missouri Pacific Railway Co. v. Martino, 2 Tex. Civ. App. 634, 18 S. W. Rep. 1066, 21 S. W. Rep. 781. It appeared that plaintiffs purchased limited tickets to a certain point and return; a condition printed thereon required that they should be signed and stamped by the company's agent at that point before they would be honored for the return passage. The return coupons bore the signature and stamp of a person purporting to be the company's agent at another point, and were refused by the conductor. Held, that evidence that the person signing and stamping the return coupons was an authorized agent of defendant was admissible to show a waiver of the condition. Taylor v. Seaboard & R. Railway Co.,99 N. Car. 185, 5 S. E. Rep. 750. A condition that the ticket is not good for return passage unless the holder identifies himself to the agent of the connecting road at M "on or before January 20, 1888, and, when officially signed • • • by said agent, this ticket shall be good only three days after such date," means that the journey is to be completed within the three days, and not merely commenced within that time. Gulf, C. & S. F. Railway Co. v. Wright, 2 Tex. Civ. App. 463, 21 S. W Rep. 399.

Where a passenger signs a contract printed on his ticket, stipulating that his ticket shall be void unless countersigned by an agent of the railroad at a certain point, and omits to obtain such countersignature, relying on the statement of the agent that it is unnecessary, he may rightfully be refused passage on the unsigned ticket, and has no right of action if ejected from the train. Central Trust Co. v. East Tennessee, V. & G. Railway Co. (C. C.), 65 Fed. Rep. 332. If he signs such a condition printed on his ticket and accepts the ticket, he is bound by the condition, whether he read it or not. Boylan v. Hot Springs Railway Co., 10 Spp. Ct . Rep. 50. A person who buys and signs a coupon railroad ticket cannot plead that he is not bound by special stipulations in small type on the ticket, providing that the selling company acts only as agent for connecting roads, and is not responsible beyond its own line, simply because his attention was not called to them. Bethea v. Northeastern Railway Co., 26 S. Car. 91, 1 S. E. Rep. 372. The condition of a "special excursion ticket" that for the return journey it should be stamped by the ticket agent, was not waived by the carrier either by the fact that the gateman permitted the passenger to pass through the gate without examining and punching the ticket, or by the fact that the sleeping car conductor failed to notice that the ticket was unstamped, where the regular passenger conductor noticed that the ticket was unstamped as soon as he received it, and so informed the passenger. Bowers v. Pennsylvania Co , 158 Pa. St. 302, 27 Atl. Rep. 893; Boylan v. Hot Springs Railway Co., 10 Sup. Ct. Rep. 50. If the purchaser of a round trip ticket, after paying for and receiving it, perform all the stipulations of the contract on his part, or offer to do so in proper time and manner, the company is bound to honor the ticket when duly presented, notwithstanding any mistake or omission by its agents in signing or stamping it, or of the passenger in signing by direction of the agent. Head v. Georgia Pacific Railway Co., 79 Ga. 358, 7 S. E. Rep. 217. A passenger is not bound by conditions on a ticket if he did not know, or would not, by reasonable diligence, have known, that there were conditions thereon. If there was writing thereon, it is a question for the jury whether he had reasonable notice that the same contained conditions. Richardson, Spence & Co. v. Rowntree (1894), App. Cas. 217, 6 Reports, 95. Where the words "issued subject to the conditions printed on the back hereof" are printed in the margin on the face of a ticket which is sold to a passenger who sees such words, he is bound by the conditions, although he does not read them. Acton v. Castle Mail Packet Co., 73 Law Times, 158. Conditions printed on the back of a passenger's ticket, exempting the carrier from liability for loss of, or damage to, baggage under certain circumstances, or beyond a specified amount, are not binding on the passenger, if not signed or seen by him, nor referred to in the contract on the face of the ticket, nor otherwise brought to his attention. The Majestic, 17 Sup. Ct. Rep. 597, reversing 9 C. C. A. 161, and 60 Fed. Rep 624; Weigand v. Central Railway Co. of N. J. (C. C.), 75 Fed. Rep. 370. One who persists in tendering as payment of his fare a worthless ticket which he was informed was worthless before he boarded the train, cannot recover damages for being ejected from the train for refusal to pay his fare. Moore v. Ohio River Railway Co., 41 W. Va. 160, 23 S. E. Rep. 539; Pouilin v. Canadian Pacific Railway Co., 52 Fed. Rep. 197, 6 U. S. App. 298. There can be no recovery for plaintiff's ejection from a train when it appears that the ticket he presented had expired by its own limitation before he took the train,

as he knew, and that in buying it he did not tell the agent that he desired a different sort of a ticket. Lewis v. Western & A. Railway Co., 93 Ga. 225, 18 S. E. Rep. 650. The purchaser of a defective ticket, who is ejected from the train by the conductor, must rely upon his action against the company for the negligent mistake of the ticket agent. He cannot sue in tort for the ejection. New York, L. E. & W. Railway v. Bennett, 50 Fed. Rep. 496; Pouilin v. Canadian Pacific Railway Co., 52 Fed. Rep. 197, 6 U. S. App. 298. There can be no recovery for plaintiff's ejection from a train when it appears that the ticket he presented had expired by its own limitation before he took the train, as he knew, and that in buying it he did not tell the agent that he desired a different sort of a ticket. Lewis v. Western & A. Railway Co., 93 Ga. 225, 18 S. E. Rep. 650. The purchaser of a defective ticket, who is ejected from the train by the conductor, must rely upon his action against the company for the negligent mistake of the ticket agent. He cannot sue in tort for the ejection. New York, L. E. & W. Railway v. Bennett, 50 Fed. Rep. 496; Pouilin v. Canadian Pacific Railway Co., 52 Fed. Rep. 197. Acceptance of a ticket given to him after he has placed himself and baggage on board a vessel and paid his fare does not of itself render a passenger bound by a condition printed thereon limiting the liability of the carrier for loss of baggage to less than the common law liability. Lechowitzer v. Hamberg American Packet Co., 28 N. Y. Supp. 140, 6 Misc. Rep. 536. Where a person who had bought an excursion ticket to a land sale, used all diligence after the sale to make the return trip, he could not be lawfully expelled from the train though the time to which the tickets were limited had expired. Texas & P. Railway Co. v. Dennis, 4 Tex. Civ. App. 90, 23 S. W. Rep. 400. The time limited on a railroad ticket, within which the trip must be completed, must, in order to be binding, allow sufficient time for a person using ordinary diligence to accomplish the trip. Gulf, C. & S. F. Railway Co. v. Wright, 10 Tex. Civ. App. 179, 30 S. W. Rep. 294. A provision in a "local excursion" ticket sold at half the usual rate, that it shall be good for one day only, unless the holder shall deposit the return half thereof with the company's agent before its expiration, and have it extended, is reasonable and binding upon the purchaser. Missouri, K. & T. Railway Co. of Texas v. Murphy (Tex. Civ. App.), 35 S. W. Rep. 66. A railroad ticket which contains a statement that it is "good for one first-class continuous passage on and from date stamped on the back," entitles the holder only to a passage beginning on that date. And where the holder boarded a train at the place of sale seven weeks after such date, and refused to give anything in payment for his fare except such a ticket, for which refusal he was expelled from the train, he cannot recover damages for such expulsion. Texas & N. O. Railway Co. v. Demilley (Tex. Civ. App.), 41 S. W. Rep. 147. Such a ticket is good only up to and on the day it is dated and as much longer as is necessary to complete a continuous passage begun on or before that day. Texas & N. O. Railway Co. v. Powell (Tex. Civ. App.), 35 S. W. Rep. 841. Where a railroad ticket agent orally agreed to sell to plaintiff a return ticket good for 30 days, received the money therefor and delivered the ticket, and plaintiff soon afterward found that it was limited to 10 days, and demanded a change in the ticket or a return of the money, but was refused, plaintiff was entitled to return trip at any time within 30 days which he had bought and paid for, and the company could not defend an action for ejecting plaintiff's wife, while subsequently riding on the return coupon after 10 days but within 30, on the ground that the breach of contract, if any, took place when the agent refused to change the ticket or return the money, and the subsequent attempt to ride on the return coupon was at the passenger's risk. Gulf, C. & S. F. Railway Co. v. Halbrook (Tex. Civ. App.), 33 S. W. Rep. 1028. See Gulf, C. & S. F. Railway Co. v. Daniels (Tex. Civ. App.), 29 S. W. Rep. 426. A passenger, who was unable to procure a ticket because of the absence of the ticket agent is not bound to pay the extra fare charged for failure to buy a ticket in order to avoid expulsion from the train. Gulf, C. & S. F. Railway Co. v. Sparger (Tex. Civ. App.), 39 S. W. Rep. 1001.

When a coupon ticket becomes defective, either because of the way in which it was made up or by reason of the carelessness of a conductor in detaching a previous coupon, the railway company cannot refuse to accept the ticket and eject the holder. Ohio & M. Railway Co. v. Cope, 36 Ill. App. 97. When the gateman refused to allow plaintiff to pass to a train because the date on his ticket was illegible, telling him to present the ticket to the ticket receiver, whereby plaintiff lost the train, the railroad company is liable for such damages as are the immediate and necessary consequences of such refusal, if the ticket was in the same condition as when received from the company's agent, as a rule requiring a ticket, illegible when sold, to be presented to the ticket receiver before being used, is unreasonable. Northern Central Railway Co. v. O'Conner, 76 Md. 207, 24 Atl. Rep. 449. See Baltimore & O. Railway Co. v. Carr, 71 Md. 135, 17 Atl. Rep. 1052. Where a conductor refuses to accept the return coupon of a railroad ticket, thinking it not genuine, though it was perfect in letters, figures and stamp, it having while in the passenger's possession, lost its blue color, unknown to him, by getting wet, the passenger can recover damages. Chicago & E. I. Railway Co. v. Conley, 6 Ind. App. 9, 32 N. E. Rep. 96. Plaintiff purchased a ticket limited to the date indorsed thereon; and though he did not read the indorsement, he knew the company was selling such tickets, and his attention had been called to similar indorsements. He kept it until several days after the time to which it was limited, when he attempted to use it. On the conductor's refusal to accept said ticket, because it had expired, plaintiff refused to pay fare, permitted himself to be led to the platform and gently ejected, after which he reentered the car and paid his fare to his destination. Held, that plaintiff had no cause of action against the company. McGhee v. Drisdale, 111 Ala. 597, 20 South. Rep. 391. Where a low priced excursion ticket on the back of which was printed the condition "if used for any other train or station than that named this ticket will be forfeited and the full fare charged," was used by a person who, instead of stopping at the point named, continued her journey by the same train to a more distant point offering to pay for the extra distance and, in returning, bought a ticket to the station at which the excursion stopped, and offered the excursion ticket in payment of her fare the rest of the way, it was held that the railroad company could collect by suit full fare of the entire journey traveled. Great Northern Railway v. Palmer (1895), 1 Q. B. 862, 15 Reports, 296. Acceptance of a mileage ticket which is expressed to be upon conditions that "the purchaser agrees to sign his name in presence of conductor each time before detachment is made," and that "unless the proper signature is given this ticket is forfeited," does not constitute an agreement that the conductor may decide for the holder as well as

for the company, whether the holder is the purchaser named in the ticket, so as to deprive such holder of his right of action for being wrongfully expelled from a train by the conductor under the erroneous claim that the signature offered is not that of the original purchaser. Pittsburgh, C. C. & St. L. Railway Co. v. Russ, 6 C. C. A. 597, 57 Fed. Rep. 822. A commutation ticket entitled any member of a firm to travel thereon, on certain terms, among which was a condition requiring them to sign their names on the back, and another providing that the ticket should be good only for the persons named thereon. Held, that the ticket was not good for a member of the firm who had not indorsed it. Granier v. Louisiana W. Railway Co., 42 La. Ann. 880, 8 South. Rep. 614. Where a traveler applies to the regular ticket agent of a railway company for a ticket, and is given one which is not good for some reason of which he is ignorant but for which he pays the price of a valid ticket, and the conductor, upon presentation of such ticket, ejects the holder from the train, the company must respond in damages. Evansville & T. H. Railroad Co. v. Cates, 14 Ind. App. 172, 41 N. E. Rep. 712; Callaway v. Mellett, 15 Ind. App. 366, 44 N. E. Rep. 198. See Philadelphia, W. & B. Railway Co. v. Rice, 64 Md. 63, 21 Atl. Rep. 97. One who asks the ticket agent for a first class ticket, paying for the same, and goes to the depot immediately after buying the ticket, but misses the train, and, taking the next train on the following morning, is forcibly ejected by the conductor because his ticket proves to be a first class limited ticket which expired the day he purchased it, may maintain an action for tort for the forcible ejection. Louisville & N. Railway Co. v. Gaines (Ky.), 35 S. W. Rep. 174. Where defendant's ticket agent, by mistake, sold a person an expired and worthless ticket, which showed on its face its worthlessness, and the conductor refused to accept it, and, in default of payment of fare, compelled the holder to leave the train, but used no physical force, the latter cannot sue in trespass for the expulsion. Baggett v. Baltimore & O. Railway Co., 3 App. D. C. 522. See Gulf C. & S. F. Railway Co. v. Rather, 3 Tex. Civ. App. 72, 21 S. W. Rep. 951. Where plaintiff, upon presenting his ticket to be stamped for the return passage was refused by the ticket agent because the agent at the selling office had neglected to stamp it, and was then told that the ticket was worthless for passage on the defendant railroad, but, nevertheless tendered the ticket in payment, of his return fare, which was refused, and declining to pay his fare, was ejected, he can recover only the damages sustained by reason of the delay and purchase of another ticket and not for being ejected from the train. Russell v. Missouri K. & T. Railway Co. (Tex. Civ. App.), 35 S. W. Rep. 724. Plaintiff having purchased a ticket good only on trains stopping at his destination, was, by fault of defendants' station agent, induced to take a train which, under the schedule, did not stop at that place, and was ejected by the conductor. Held, that plaintiff could sue in tort, and not merely for breach of contract. Pittsburgh, C. C. & St. L. Railway Co. v. Reynolds (Ohio Sup.), 45 N. E. Rep. 712. But where the purchaser of a ticket, uninfluenced by any fault of the railroad company's servants, gets on a train which does not stop at the station to which he has bought a ticket, the company is not liable in damages for failing to stop the train at that station to let him off. Louisville & N. Railway Co. v. Miles (Ky.), 37 S. W. Rep. 486; Noble v. Atchison, T. & S. F. Railway Co. (Okla.), 46 Pac. Rep. 483. Where a limited ticket, good only to a certain date and so mutilated that the date when it expires cannot be deciphered, is presented by a passenger, it is the duty of the conductor to accept the passenger's statement as to when the ticket was purchased and when it expires, and the manner in which it was mutilated until he can ascertain with reasonable certainty that the ticket has expired or that it was mutilated by the fault of the passenger. Houston & T. C. Railway Co. v. Crone (Tex. Civ. App.), 37 S. W. Rep. 1074. Where a ticket is presented on the day of purchase, but the conductor refuses to accept it because it bears a prior date, which, if the true date of the sale, would not entitle the holder to passage, he may refuse to pay or get off, and, being forcibly ejected, may recover therefor. Ellsworth v. Chicago, B. & Q. Railway Co. (Iowa), 63 N. W. Rep. 584. Plaintiff purchased from the defendant's agent a mileage ticket or book, containing 2000 miles of transportation for which he paid $50. The date of issue was stamped on the ticket, and it was, by the mistake of the agent, punched on the margin to expire on the day it was issued instead of a year later. Plaintiff signed a contract printed on the cover which stated that the ticket was "void for passage after date punched in margin." He offered this ticket and the mileage thereon for his fare on defendant's road six months after he purchased it but it was refused. He refused to pay another fare aud was ejected by the conductor. Held, that the provision limiting the ticket to expire the day it was issued was void as the price paid for one day's use of the ticket was extortionate and plaintiff was not bound by his written agreement until it had been reformed in a court of equity; and that plaintiff was entitled to recover damages. Kreuger v. Chicago, St. P. M. & O. Railway Co. (Minn. Sup.), 71 N. W. Rep. 683; Price v. Chesapeake & O. Ry Co., 40 W. Va. 271, 21 S. E. Rep. 1022.

LOUIS B. EWBANK.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACTION—Misjoinder of Causes of Action.—A declaration with two counts, one for property received, which defendants promised to account for, and one for the conversion of property casually lost by plaintiff, is bad on a general demurrer for misjoinder of a count in contract with one in tort.—GARY V. ABINGDON PUB. CO., Va., 27 S. E. Rep. 595.

2. ADMINISTRATION — Claims against Decedent—Implied Contract.—Acceptance by a woman of a devise of a house on condition that "she provide a home" therein for her uncle creates a family relation between her and such uncle, which excludes an implied contract to pay for nursing and other personal services rendered by her to him.—IN RE LACKEY'S ESTATE, Penn., 37 Atl. Rep. 813.

3. ADVERSE POSSESSION.—Until a patent has issued for public land which has been entered, possession of a third person cannot be adverse to the entryman.—STEPHENS V. MOORE, Ala., 22 South. Rep. 542.

4. APPEAL—Bill of Exceptions.—Where two judgments were entered at the same term, though the record recited that "plaintiffs, by counsel, except to setting aside judgment, and to modification of the judgment heretofore entered," in the absence of any showing in the bill of exceptions to the contrary, it was presumed that plaintiffs acquiesced in the entry of judgment.—CRITCHFIELD V. LINVILLE, Mo., 41 S. W. Rep. 786.

5. APPEAL BOND — Garnishment.—On appeal by plaintiff, in an action accompanied by garnishment, from a judgment holding defendant not indebted to plaintiff, an appeal bond, which LAWS 1893, p. 123, § 6, requires to be given to the "adverse party," need not be given to the garnishee.—SEATTLE TRUST CO. V. PITNER, Wash., 49 Pac. Rep. 505.

6. ASSIGNMENT FOR BENEFIT OF CREDITORS—Preferences.—Mortgages made and preferences attempted by an assignor in connection with and as a part of a general assignment for the benefit of his creditors are invalid, but they will not necessarily destroy the validity of the deed of assignment, nor affect the *pro rata* distribution of the assigned estate among the creditors.—STURTEVANT V. SARBACH, Kan., 49 Pac. Rep. 522.

7. ASSIGNMENT FOR CREDITORS — Sale of Pledge.—A debtor made an assignment to one who held his note secured by certain stocks as collatteral, and a judgment for the amount of the note, which was a first lien on his estate. The creditor sold the stock collateral: Held, that on sale of the stock, which it held as pledgee, and not as assignee, it was bound to apply the proceeds at once, and could not, after converting the stock into money, hold the money as collateral, and allow interest to run on the notes.—IN RE WILHELM'S ESTATE, Penn., 37 Atl. Rep. 820.

8. ASSIGNMENT OF CHOSE IN ACTION—Suit by Assignor.—An assignor of a chose in action, secured by a vendor's lien cannot sue in equity to enforce the lien for the benefit of his assignee.—PENN V. HEARON, Va., 27 S. E. Rep. 599.

9. ATTORNEY AND CLIENT — Privileged Communications.—Declarations made by a client to his attorney while the latter is drawing a deed of conveyance for the client as grantor, and openly in the presence of the grantee, are not privileged as to the grantee.—HUMMEL V. KISTNER, Penn., 37 Atl. Rep. 815.

10. BANKS—Deposits—Set-off.—A bank cannot set off against the deposit of an insolvent depositor notes owing to it by him which had not matured at the time of his assignment in insolvency.—HOMER V. NATIONAL BANK OF COMMERCE IN ST. LOUIS, Mo., 41 S. W. Rep. 790.

11. BILLS AND NOTES—Demand Note—Presentment.—A negotiable note payable "on demand" or "on call" is payable at once, and, in order to charge the indorser, must be presented for payment within a reasonable time.—BACON'S ADMR. V. BACON'S TRUSTEES, Va., 27 S. E. Rep. 576.

12. BILLS AND NOTES — Drafts — Accommodation Indorsements.—The liability of one who indorses a draft for accommodation of the payee is the same as that of a regular indorser, and hence payment by the drawee is a defense to an action on the indorsement.—ALABAMA NAT. BANK V. RIVERS, Ala., 22 South. Rep. 580.

13. BILLS AND NOTES—Promissory Notes—Negotiability.—The indorsement of credits on the back of a note before its delivery does not render it non-negotiable.—FARMERS' BANK OF SPRINGVILLE, N. Y. V. SHIPPEY, Penn., 37 Atl. Rep. 844.

14. BUILDING AND LOAN ASSOCIATIONS — Surrender of Stock.—Where a building and loan association's by-laws provide that a member who has made all payments may surrender his shares of stock at any time after a certain period from the date of his certificate, on giving 60 days' notice, and take the withdrawal value thereof in cash, the relation of debtor and creditor is established as soon as the member has surrendered his stock, and has given the required notice.—MCNAB V. SOUTHERN MUT. BUILDING & LOAN ASSN., S. Car., 27 S. E. Rep. 543.

15. CARRIERS—Goods—Exceptions in Bill of Lading.—In a clause in a bill of lading exempting the carrier from liability for "loss or damage arising from collisions, explosions, accidents to boilers or machinery," applies only to the group of mechanical parts connected with the boiler and steam supply, by which power is generated and applied, and the vessel or train of cars is propelled, and it does not include an axle of one of the cars in a train. Accordingly held that under such a bill of lading the carrier was not exempted from liability for damage caused by the breaking of an axle of a car.—N. K. FAIRBANK & CO. V. CINCINNATI, ETC. RY., U. S. C. C. of App., Sixth Circuit, 81 Fed. Rep. 289.

16. CERTIORARI—Municipal Corporations—Powers.—*Certiorari* will not lie in favor of private prosecutors to review a municipal ordinance, unless it appears that such prosecutors have a personal or property interest which will be specially affected, in an injurious manner, by the enforcement of such ordinance.—TALLON V. MAYOR, ETC. OF HOBOKEN, N. J., 37 Atl. Rep. 895.

17. CITIZENSHIP — Naturalization—Eligibility of Mexicans.—Native citizens of Mexico, whatever may be their *status* from the standpoint of the ethnologist, are eligible to American citizenship, and may be individually naturalized by complying with the provisions of the naturalization laws.—IN RE RODRIGUEZ, U. S. D. C., W. D. (Tex.), 81 Fed. Rep. 337.

18. CONFLICT OF LAWS—Action in Federal Court for Injuries in Another Country.—The right of an employee of a railroad company, injured in the republic of Mexico by the negligence of the company, to recover in a civil action damages for such injury under the law of that republic, may be enforced in a federal court of the State of Texas having jurisdiction of the parties and of the subject-matter; that law being neither so vague and uncertain, nor so dissimilar to the law of the State of Texas, as to prevent it from being so enforced, and both parties being citizens of the United States.—EVEY V. MEXICAN CENT. RY. CO., U. S. C. C. of App., Fifth Circuit, 81 Fed. Rep. 294.

19. CONFLICT OF LAWS — Assignment for Benefit of Creditors.—The question whether a creditor residing in Pennsylvania is, by participation in an assignment for the benefit of creditors made in that State, and valid under its laws, estopped to proceed against lands in other States included in the assignment, on the ground that it is invalid in such States, is to be determined by the Pennsylvania courts, though the validity of the assignment elsewhere involves the *lex rei sitæ*.—KENDALL V. MCLURE COKE CO., Penn., 37 Atl. Rep. 823.

20. CONSTITUTIONAL LAW — Liability of City for Damage by Mob.—A State may constitutionally compel its counties and cities to indemnify against losses of property arising from mobs and riots within their limits, independently of any misconduct or negligence on the part of such city or county to which the loss can be attributed. The Illinois statute to that effect is therefore valid.—PENNSYLVANIA CO. V. CITY OF CHICAGO, U. S. C. C., N. D. (Ill.), 81 Fed. Rep. 317.

21. CONSTITUTIONAL LAW — Power of Congress over Navigable Waters.—Congress has absolute power, in

the interests of interstate and foreign commerce, over the navigable waters of the United States, and may declare what may or may not constitute obstructions thereto.—UNITED STATES v. NORTH BLOOMFIELD GRAVEL-MIN. CO., U. S. C. C., N. D. (Cal.), 81 Fed. Rep. 243.

22. CONSTITUTIONAL LAW—Trial by Jury.—The right of trial by jury in proceedings according to the course of the common law, as shown and practiced at the time of the organization of our State government, and continued or guarantied by the third section of the bill of rights of the constitution of 1885, has reference to legal rights and contentions, and not to equitable demands, enforced in a court of chancery, whether pertaining to the original or concurrent jurisdiction of that court.—HUGHES v. HANNAH, Fla., 22 South. Rep. 613.

23. CONTRACTS—Agency—Conditional Sales.—A contract between an implement manufacturing company and a firm to which it consigned goods, provided that the firm should be the company's "sole agent or agents for the sale on commission of its machines until all goods shipped under terms of this contract are sold or turned over" to the company, "which shall be done on the latter's order;" also how the sales should be made, the manner of settlement for same, the amount of the commission, and how it should be paid, that notes taken for machines should be made payable to the company, and that the proceeds of sales should remain the property of the company till it should be paid. There were various other provisions relative to the terms of the agency: Held, that it was an agency contract, and not one of conditional sale, and that the machines consigned to the agent thereunder remained the property of the company till sold.—MONITOR MANUFG. CO. v. JONES, Wis., 72 N. W. Rep. 44.

24. CONTRACTS—Coverture—Personal Defense.—In an action by a married woman on a contract made by her, coverture cannot be interposed as a defense.—MOORE v. PRICE, Ala., 22 South. Rep. 531.

25. CONTRACT—Parol Evidence to Explain.—Where a written contract contains characters, abbreviations, or apparently ambiguous terms, parol evidence is admissible to show that they have a recognized and generally understood meaning in the trade or business to which the subject of the contract relates. Such evidence does not vary or add to the writing, but merely translates it from the language of the trade into the language of people generally.—MAURIN v. LYON, Minn., 72 N. W. Rep. 72.

26. CONTRACT—Part Performance.—A plaintiff having done work under a special contract, but not in full compliance therewith, and the same having been accepted by defendant, who was thereby benefited, may recover the contract price therefor, less compensation for imperfections of the work or materials.—SMITH v. PACKARD, Va., 27 S. E. Rep. 586.

27. CONTRACT—Separable Contract.—A contract to erect five houses, described, on lands to be designated, to be completed at a fixed time, for a definite price for each house, is a separable contract.—BARNARD v. MC. LEOD, Mich., 72 N. W. Rep. 24.

28. CONTRACT—Speculative Damages.—No recovery can be had for the breach of a contract to place plaintiffs' names at the bottom of advertisements in Detroit papers for beautifiers of women, stating that such beautifiers may be had at plaintiffs' stores, as the damages would be speculative.—STEVENS v. YALE, Mich., 72 N. W. Rep. 5.

29. CONTRACTS IN RESTRAINT OF TRADE — Consideration.—A completed sale of a business is not a sufficient consideration for a subsequent contract by the seller not to engage in the same business in the vicinity within a certain time.—CLEAVER v. LENHART, Penn., 37 Atl. Rep. 811.

30. CORPORATION—Foreign Corporations.—The leasing by a corporation of the use of its property and franchises for an inadequate rental is, in respect to the depreciation of its stock thereby, a matter of the internal management of the corporation; and hence a stockholders' bill to compel the taking of bids for such lease, and the appointment of a master to manage the corporation, must be brought at the corporation's domicile, not in the State where the property and franchises are situate. — MADDEN v. PENN ELECTRIC LIGHT CO., Penn., 37 Atl. Rep. 817.

31. CREDITORS' BILL—When Lies.—A bill will not lie to subject equitable assets to the payment of a claim which has not been reduced to judgment, and which is against a resident.—JENKS v. HORTON, Mich., 72 N. W. Rep. 20.

32. CRIMINAL EVIDENCE — Assault—Reputation.—On indictment for assault and battery on a woman, where defendant's witnesses testified to his good character, their testimony on cross-examination that his character "was bad for running after women" was admissible.—BALKUM v. STATE, Ala., 22 South. Rep. 532.

33. CRIMINAL EVIDENCE—Forgery.—Evidence of unexplained possession of forged checks under suspicious circumstances of concealment authorizes the submission to the jury of the question of guilt under an indictment for the forgery of one of the checks.—BARNES v. COMMONWEALTH, Ky., 41 S. W. Rep. 772.

34. CRIMINAL EVIDENCE — Homicide.—In a murder case, it is proper to admit, and allow to be exhibited to the jury, a diagram, prepared by an attorney for the State, of the place of the homicide, indicating the locality of objects to which there is much reference in the testimony, upon which can be traced the route that it is claimed defendant followed in going to and returning from the place of the homicide, in connection with the evidence of the draftsman as to its accuracy.—BURTON v. STATE, Ala., 22 South. Rep. 585.

35. CRIMINAL LAW—Forgery.—A mere account, which creates no obligation, and is of itself neither an evidence of debt, nor of title, is not the subject of forgery, as being within the meaning of the words "other instrument," if otherwise construed.—STATE v. HEATON, Wash., 49 Pac. Rep. 493.

36. CRIMINAL LAW—Homicide—Defense of Property.—One has no right to shoot another to prevent him from taking away a dog which both are claiming.—TRUSTY v. COMMONWEALTH, Ky., 41 S. W. Rep. 766.

37. CRIMINAL LAW—Indictment—Allegation of Intent—Where the intent to commit the act charged in an indictment is not necessarily an ingredient of the crime, as defined by the statute, then the fact that the act may have been committed under an ignorance or mistake of fact is no defense to the crime charged.—GARVER v. TERRITORY, Okla., 49 Pac. Rep. 470.

38. CRIMINAL PRACTICE—Burglary—Indictment.—In an indictment for burglary of a smoke house used in connection with the dwelling occupied by a husband and wife, both being the property of the wife, the ownership may be laid in the husband where the smoke house is on the same premises as the dwelling, is subjected to the ordinary family uses, and the husband carries the key to, and owns and controls meat kept in, such house.—RICHARDSON v. STATE, Ala., 22 South. Rep. 558.

39. CRIMINAL PRACTICE—Indictment.—A person may be charged as principal and as accessory before the fact to the crime of arson in different counts of the same indictment; and the prosecution will not be compelled to elect upon which count it will proceed.—STATE v. ARDOIN, La., 22 South. Rep. 620.

40. DAMAGES—Breach of Contract by Carrier.—Where the agent of a connecting carrier by mistake has given to a shipper an unusually low rate on a special shipment, and the initial carrier, without knowledge of such rate, breaks its contract of carriage by sending the goods over a different road from that mentioned in the bills of lading, so that the shipper is compelled to pay the usual rate of freight, the initial carrier is liable, because of the breach, only for such damages as might reasonably have been within the contemplation

of the parties on making the contract, and not for the whole difference between the regular rate and the special rate, of which it had no notice.—CENTRAL TRUST CO. v. GEORGIA PAC. RY. CO., U. S. C. C., N. D. (Ga.), 81 Fed. Rep. 277.

41. DAMAGES — Personal Injuries.—A woman living with her husband, in an action for damages, is not entitled to recover for moneys necessarily paid for medicinal treatment and care.—STATE v. CITY OF DETROIT, Mich., 72 N. W. Rep. 8.

42. DAMAGES—Personal Injury.—Where the declaration charges only a physical hurt, resulting in soreness and lameness, there can be no recovery for rheumatism augmented by the accident, though plaintiff was a rheumatic person.—HALL v. CITY OF CADILLAC, Mich., 72 N. W. Rep. 33.

43. DEEDS—Consideration—Agreement to Support.—Where a grantee agreed to live with and care for the grantor during his life in consideration of the conveyance, the fact the grantor removed from the house in which the parties lived to a cottage near by, which he had built for greater convenience and retirement, and also for securing a lodging room on the lower floor, did not show an abandonment of the contract, or that the conveyance was without consideration.—CHASE v. CHASE, R. I., 37 Atl. Rep. 804.

44. DEED—Delivery.—Where a father, in consideration of love and affection, conveyed land to his daughter, and delivered the deed to the justice of the peace, before whom he acknowledged it, with directions to hold it till called for by the proper person, and she was aware of and assented to the conveyance, and in her father's life took possession of the premises, the deed took effect on delivery to the justice, and its subsequent loss did not affect her title.—APPLEMAN v. APPLEMAN, Mo., 41 S. W. Rep. 794.

45. DEEDS—Registration—Subrogation.—A purchaser of a trustee named in a trust deed recorded prior to the docketing of a judgment, and executed by the judgment debtor's grantee, who purchased prior to such docketing, but whose deed was recorded thereafter, takes subject to the judgment. — JONES v. BYRNE'S EX'X., Va., 27 S. E. Rep. 591.

46. DEED—Right of Way.—Grantees in a deed providing that, while part of the granted premises shall be used in common by the grantor and grantees, the grantees shall be granted and allowed a pass way on the grantor's land, lose their right of way by excluding the grantor by erecting a structure of a permanent character on most of the granted premises, and fencing the rest; this being acquiesced in by the grantor.—BOTSFORD v. WALLACE, Conn., 37 Atl. Rep. 902.

47. DEED BY WIFE—Consideration.—A decree will not be disturbed where it was determined from the testimony of two or three witnesses who are not agreed upon the facts. — KIELDSEN v. BLODGETT, Mich., 72 N. W. Rep. 9.

48. EQUITABLE ASSIGNMENTS. — Where a fund to become due was assigned to secure future advances, the assignee's agreement to pay a certain amount thereof when received to a creditor of the assignor gave the creditor no lien on the fund, nor was it an equitable assignment thereof, especially where the assignment was annulled after the agreement was made, and before the assignee had collected the fund. — HICKS v. ROANOKE BRICK CO., Va., 27 S. E. Rep. 596.

49. EQUITY — Multifariousness. — A large number of persons, induced by identical fraudulent representations to become subscribers to a company, may unite in one bill against such company and its officers and agents, praying for the cancellation of their subscriptions.—RADER v. BRISTOL LAND CO., Va., 27 S. E. Rep. 590.

50. EVIDENCE—Customs and Usage—Commissions.—A real estate agent seeking to recover commissions for negotiating a sale, where no contract was made in regard thereto, may prove the custom as to the rate of commissions and the time of payment in the place where the business was done and the land sold.—HANSBROUGH v. NEAL, Va., 27 S. E. Rep. 593.

51. EVIDENCE—Damages—Exposure of Person.—In a suit for personal injuries to a wife, where damages for humiliation from exposure of her person were claimed, it was competent for defendant to prove that she kept a disreputable house, and was reputed a prostitute.—HOUSTON & T. C. R. CO. v. RITTER, Tex., 41 S. W. Rep. 753.

52. EVIDENCE — Parol Evidence. — In an action on a note given for the price of animals, evidence was not admissible that on the same day, but before it was given, plaintiff agreed to credit on the note such an amount as should be found defendant's due, because an animal bought of plaintiff at a prior sale for breeding purposes proved to be barren.—PHELPS v. ABBOTT, Mich., 72 N. W. Rep. 3.

53. EVIDENCE—Parol Evidence — Fraud.—Where the evidence shows that whatever agreement was entered into between the parties was reduced to writing, preliminary oral negotiations cannot be considered as independent evidence of such an agreement.—SHELEY v. BROOKS, Mich., 72 N. W. Rep. 37.

54. EXTRADITION — Revocation of Warrant. — The governor of a State has the power to revoke his warrant for the surrender of an alleged fugitive from justice at any time before he is taken out of the State.—STATE v. TOOLE, Minn., 72 N. W. Rep. 53.

55. FEDERAL COURTS — Following State Law. — The federal courts will follow the law of the State where a judgment is rendered as to its effect in merging the original cause of action.—PARKER v. WHITTIER, U. S. C. C., D. (Mass.), 81 Fed. Rep. 335.

56. FEDERAL COURTS—Jurisdiction.—In an action on negotiable bonds which have matured, together with the coupons, neither the interest on the bonds after maturity, nor the interest on the coupons after their maturity, constitutes a part of the matter in dispute, in determining the jurisdiction of the circuit court, where the controversy arises between citizens of different States.—GREENE COUNTY v. KORTRECHT, U. S. C. C. of App., Fifth Circuit, 81 Fed. Rep. 241.

57. FEDERAL COURTS — Jurisdiction — Citizenship — Next Friend. — A next friend conducting a suit in behalf of an infant is not a party to the action, and his citizenship is not a test of the jurisdiction of the federal courts.—BLUMENTHAL v. CRAIG, U. S. C. C. of App., Third Circuit, 81 Fed. Rep. 320.

58. FRAUDULENT CONVEYANCES — Evidence.—A creditor of an insolvent, if necessary to secure his debt, may purchase at a fair price property of his debtor which exceeds in value the amount of his debt, and out of the purchase money reserve enough to pay his own debt and pay the remainder to the debtor, though he may know at the time that the object of the debtor is to deprive other creditors of the means of collecting their debts.—FLY v. SCREETON, Ark., 41 S. W. Rep. 764.

59. FRAUDULENT CONVEYANCES—Partial Assignments.—Where an insolvent made transfers to various creditors, and afterwards made an assignment for benefit of creditors, the question whether the transaction, as a whole, constituted a general assignment, inuring under the statute to all the creditors, could not be raised by an attaching creditor seeking to enforce his legal rights against one of the transferees, by whom the property was claimed in statutory form for the trial of the right of property. — DAVIDSON v. KAHN, Ala., 22 South. Rep. 539.

60. GARNISHMENT — Following Funds — Trusts. — A judgment creditor who has garnished a company, and procured a judgment *nisi* for his claim in full, has no right to a fund due from the company to the debtor at the time of the garnishment, but which was subsequently paid for the benefit of the debtor to a trustee in whose hands it was attached by other creditors, as it is presumed the company retained funds sufficient to pay the claim. — OHIO BRASS CO. v. CLARK, Md., 37 Atl. Rep. 899.

61. GIFTS — Delivery. — Shortly before his death, the donor said to his wife's brother, in the presence of his wife, that he had transferred his life insurance to the wife; that the policies were in his safe; and that, as soon as possible after his death, the brother should get the insurance money for the wife. After the donor's death the brother found in the donor's office safe an absolute assignment of the policies to his wife, inclosed with the policies in an envelope bearing her name: Held, that the question of delivery was for the jury.—KULP v. MARCH, Penn., 37 Atl. Rep. 913.

62. HABEAS CORPUS — Jurisdiction. — Upon *habeas corpus* cognizance can be taken only of defects of a jurisdictional character, which render the proceedings under which the relator is imprisoned, not merely erroneous, but absolutely void. — STATE v. MCMAHON, Minn., 72 N. W. Rep. 79.

63. HUSBAND AND WIFE—Employment of Husband by Wife. — In equity, a contract between husband and wife, relating to the wife's separate estate, is as valid against the husband's creditors as if the wife were a *feme sole*.—TALCOTT v. ARNOLD, N. J., 37 Atl. Rep. 891.

64. INJUNCTION — Local Improvements. — A suit by a taxpayer brought to enjoin the execution of an unconstitutional act for a local road improvement is too late if not brought until after he has voluntarily paid all taxes assessed or to be assessed against him for that purpose. — STATE v. BADER, Ohio, 47 N. E. Rep. 564.

65. INSURANCE — False Representations.—Where one procuring insurance for plaintiff, as her agent, falsely represents that she is a business man, it avoids the policy.—FREEDMAN v. PROVIDENCE-WASHINGTON INS. CO., Penn., 37 Atl. Rep. 909.

66. INSURANCE—Warranty and Conditions.—A condition in a fire policy that it shall be void "if the property shall be sold or transferred, or any change take place in the title or possession," does not apply to a mortgage executed before the policy was issued. — COWART v. CAPITAL CITY INS. CO., Ala., 22 South. Rep. 574.

67. JUDGMENT—Equitable Relief.—A party cannot obtain equitable relief against a decree rendered in a cause to which he was a party, on the ground that no process was served on him, where the process appears to have been executed by the return, and by the recital in the decree taking the bill for confessed, unless a false return of service was procured or induced by plaintiff therein, or he can in some way be connected with the deception.—PRESTON v. KINDRICK, Va., 27 S. E. Rep. 588.

68. JUDGMENT LIEN—Interest of Beneficiary.—Where testator leaves his estate in trust, giving a beneficial interest in one-fourth of it to his son on the death of testator's wife, but the specific property of which it shall consist is left within the control of the trustees, and can only be determined when they make the division between the beneficiaries on the death of testator's widow, such sum has no vested interest in any part of the land, but only a mere possibility, not the subject of lien.—IN RE HANDY'S ESTATE, Penn., 37 Atl. Rep. 854.

69. LANDLORD AND TENANT—Crops—Tenancy in Common.—An agreement for the cultivation of land on shares construed, and held, that the owner and the occupier were tenants in common of the crops; the title, however, remaining in the owner as security for the performance by the occupier of the terms of the agreement, and for the repayment of advances which the owner might make to the occupier, and for the payment of all indebtedness due from the latter to the former.—ANDERSON v. LISTON, Minn., 72 N. W. Rep. 52.

70. LIEN ON CROP—Advances.—The indorser of a note whose payee has made advances to an agriculturalist on the strength of the indorsement is entitled to the benefits of Rev. St. § 2514, creating a lien on the crop in favor of one who has made advances "in money or supplies" for the purpose of raising such crop.—LOCKHART v. SMITH, S. Car., 27 S. E. Rep. 567.

71. MANDAMUS—City Warrants.—An application for *mandamus* to compel a city treasurer to pay certain warrants is a proper remedy, though there was a question as to whether they had not been in fact previously paid, where the material facts were not controverted, but the controversy was rather as to the construction to be put upon them, thus creating substantially a question of law, and not of fact.—BARDSLEY v. STERNBERG, Wash., 49 Pac. Rep. 499.

72. MASTER AND SERVANT—Assumption of Risks.—A servant who knew from his own observation, as well as from what had been told him by his employer, that an open dock on which he was piling lumber was unsafe, because of defective supports, assumed the risks of the employment by voluntarily continuing in it.—SODERSTROM v. HOLLAND EMERY LUMBER CO., Mich., 72 N. W. Rep. 13.

73. MASTER AND SERVANT — Fellow-servants.—A switchman employed by a board composed of representatives of three railroad corporations, and beyond the control of any one of such corporations, and a car inspector employed by one of such corporations, are not fellow-servants, though both were working in the same yard, and were engaged in the common enterprise of handling business for the same road, and the inspector was subject to the board's yard regulations. —KASTL v. WABASH R. CO., Mich., 72 N. W. Rep. 28.

74. MASTER AND SERVANT—Intimidation of Employees —Damages.—It is an unlawful intimidation of employees for a large number of persons to surround them, and follow them for a considerable distance, urging them in a hostile manner not to go to work, and calling them opprobrious names, though no physical violence is used; and persons so doing are liable in damages to the employer.—O'NEILL v. BEHANNA, Penn., 37 Atl. Rep. 843.

75. MASTER AND SERVANT—Negligence—Fellow-servant.—An employer whose duty it is provide reasonably safe appliances cannot escape liability for his negligence by employing incompetent or unsuitable persons to discharge it.—DONNELLY v. BOOTH BROTHERS & HURRICAN ISLE GRANITE CO., Me., 37 Atl. Rep. 874.

76. MASTER AND SERVANT — Wrongful Discharge — Measure of Damages.—When suit is brought and trial is had before the expiration of the stipulated term of service to recover damages for a breach of contract by a wrongful discharge, the recovery cannot be for the whole amount of salary for the entire term, but only for the amount thereof to the date of trial, less such sum as plaintiff has earned, or might with reasonable diligence have earned, from the time of discharge to the time of trial.—DARST v. MATHIESON ALKALI WORKS, U. S. C. C., W. D. (Va.), 81 Fed. Rep. 284.

77. MECHANICS' LIENS—Constitutionality of Statute. —The mechanic's lien law (Acts 1859-60, p. 514), providing that if a claim for materials or that of a subcontractor is presented to the owner within 30 days after the completion of the building, and suit is brought within 9 months, it is sufficient to give a lien for the entire claim, not exceeding the amount of the contract, without requiring notice of the claim in fact or constructively to be given to the owner, and without regard to the amount due under the contract, is unconstitutional.—SELMA SASH, DOOR & BLIND FACTORY v. STODDARD, Ala., 22 South. Rep. 555.

78. MORTGAGE—Assignment — Satisfaction.—In consideration for a deed the grantee assigned to the grantor a mortgage on the lands of a third person. The grantor and grantee made a contract, to which the mortgagor was a stranger, whereby the grantor agreed to apply the proceeds of the mortgage to the satisfaction of mortgages executed by him on lands which he had subsequently conveyed to the grantee's children. The grantor satisfied the assigned mortgage of record, but failed to apply the proceeds as agreed. The grantee was never disturbed in the possession of

the lands coveyed to her by the grantor, and the lands were free from liens created by him: Held, that the grantee could not subsequently assign any interest in the mortgage to a person with notice of the prior assignment and satisfaction, since the grantee had no equitable interest in the purchase money, the grantor being liable, at most, but for a breach of the contract. —NEWELL v. NEWELL, S. Car., 27 S. E. Rep. 560.

79. MORTGAGE—Deed of Trust—Consideration.—Where a creditor definitely extends the time of the maturity of the debt in consideration of a deed of trust, and without notice of a third person's equity in the land, he is a *bona fide* purchaser for value, and at a sale under the trust deed a purchaser takes the property freed from the equity, though chargeable with notice thereof.—RANDOLPH v. WEBB, Ala., 22 South. Rep. 550.

80. MORTGAGES — Satisfaction of Record.—Without searching the records, a mortgagee accepted a quitclaim deed to the premises, and entered a satisfaction of the mortgage of record. A subsequent mortgage had been executed to secure a loan made by M as agent. M was the agent of the mortgagor in delivering the deed, and when the grantee objected to it because it was merely a quitclaim, M assured him that it was sufficient. M did not know whether the second mortgage had been paid, but knew that the grantee was ignorant of it: Held, that the grantee was entitled to have his mortgage lien reinstated.—NOMMENSON v. ANGLE, Wash., 49 Pac. Rep. 484.

81. MORTGAGE—Usury.—A loan broker, at the instance of complainants, obtained for them a loan from defendant, which was secured by a mortgage made by complainants to defendant, for a gross sum, which included the sum so loaned, and a certain sum charged by such broker as compensation for his services in obtaining the loan, which had been agreed upon between him and complainants, and which the mortgagee agreed to pay when collected from mortgagors: Held, that such mortgage was not usurious. —SECOR v. PATTERSON, Mich., 72 N. W. Rep. 10.

82. MORTGAGE BY DOWRESS—Validity.—A mortgage by a dowress before the dower had been assigned conveys no title to the premises.—RITT v. DODGE, R. I., 37 Atl. Rep. 810.

83. MUNICIPAL CORPORATION — Authority—Ratification.—It is no defense to a municipal lien for the cost of paving a street that the work was not authorized before it was done, where the council, on its completion, fully accepted it.—CITY OF CHESTER v. EYRE, Penn., 37 Atl. Rep. 837.

84. MUNICIPAL CORPORATION—City Council—Appropriations.—Under a city charter providing that no money should be appropriated except by a majority vote of the aldermen elected, except as otherwise provided, and providing that the mayor should be president of the council, and should have no vote except in case of a tie, when he should have the casting vote, a motion to engage firemen at a certain salary per month was an appropriation of money requiring the vote of a majority of the aldermen, and on a tie vote the mayor could throw the casting vote.—BISHOP v. LAMBERT, Mich., 72 N. W. Rep. 35.

85. MUNICIPAL CORPORATION—Defective Sidewalks.—The fact that plaintiff knew of the defective condition of a sidewalk by reason of which he sustained the injuries sued for does not necessarily preclude a recovery, if he used due care in view of the danger.—SCHWINGSCHLEGL v. CITY OF MONROE, Mich., 72 N. W. Rep. 7.

86. MUNICIPAL CORPORATION—Defective Sidewalks—Notice. — Where an abutting owner had obtained a permit to excavate under the sidewalk, and had done so, and had placed a temporary sidewalk in its place, and subsequently removed it, and such excavation had existed for several weeks without a barrier, it was for the jury to say whether the street had remained in a dangerous condition so long that the city, in the exercise of ordinary care, could have known thereof.—SPROUL v. CITY OF SEATTLE, Wash., 49 Pac. Rep. 489.

87. NEGLIGENCE—Landlord—Independent Contractor. —Where a landlord employed a builder, who was no subject to his orders, except as to the result to be obtained, to build a privy on premises occupied by plaintiffs, he was not liable for the negligence of the builder in leaving an excavation filled with water, which caused the death of plaintiffs' child.—WIESE v. REMME, Mo., 41 S. W. Rep. 797.

88. NUISANCE—Storing Dynamite.—Where defendants stored large quantities of dynamite and gunpowder in a thickly settled portion of an incorporated town, and, without their fault, a neighboring building took fire, and the fire was communicated to defendants' building, and the dynamite and powder exploded, causing brands to be cast on plaintiff's building, whereby it and its contents were set on fire, and consumed, defendants were guilty of maintaining a nuisance, and were liable for the special injury resulting to plaintiff. —RUDDER v. KOOPMAN, Ala., 22 South. Rep. 601.

89. PARTITION—Parol Partition.—Where a parol partition of land is relied upon in defense of a bill for partition filed by one of the heirs, who was a married woman, and whose husband acted for her in the making of the partition, the burden of proof is on defendant to show, not only that partition was made, but also which particular lot was assigned to the wife; and hence, where the wife was one of nine heirs, it was insufficient to show merely that two lots of the land were assigned to her and a co-heir jointly.—BROOKS v. HUBBLE, Va., 27 S. E. Rep. 585.

90. PARTNERSHIP—What Constitutes.—In order to establish a friend in business, several persons executed an agreement appointing him their agent to carry on a certain business, and providing that they should advance him money up to a certain sum, and should own the stock in trade; that such agent was to repay from time to time the money advanced, was to be paid solely from the profits, and be responsible for all losses. The principals in such business did not intend to thereby become partners: Held, that as between themselves they were not partners.—KRALL v. FORNEY, Penn., 37 Atl. Rep. 846.

91. PLEADING—Amendment.—In an action to recover damages for fraud, an amendment of the complaint, after the evidence was in, setting forth a specific false representation shown by the evidence, was properly allowed.—RATHBUN v. PARKER, Mich., 72 N. W. Rep. 31.

92. PLEADING — Counterclaim.—Where plaintiff, on purchase of a half interest in land, allowed defendant, who owned the other half interest, to continue to collect the rents for benefit of both, in an action for plaintiff's share of the rents collected, a claim by defendant for damages because plaintiff had driven off the tenants, and thereby deprived defendant of rents that would otherwise have accrued, was sufficiently connected with the subject of the action to be a proper counterclaim.—DALE v. HALL, Ark., 41 S. W. Rep. 761.

93. PLEADING—Set-off — Recoupment.—It is well-settled law that, in an action by a firm for a partnership claim, a demand against one of the partners individually is not a legal or proper set-off; and, conversely, in an action by one of a firm for his individual claim, a demand against the firm cannot be offset.—JONES v. VINAL HAVAN STEAMBOAT CO., Me., 37 Atl. Rep. 879.

94. PRINCIPAL AND SURETY — Limitation of Actions.—One of two sureties is not released because the creditor allows the action to become barred by the statute of limitations as to the other.—DAVIS' ADMR. v. AUXIER, Ky., 41 S. W. Rep. 767.

95. RAILROAD AID BONDS—Validity.—Act Dec. 26, 1885, and Act Dec. 24, 1886, amending the same, and authorizing subscriptions by a county to the stock of a rail road, and giving the county power to assess and collect taxes to pay the subscriptions, are in violation of Const. art. 9, § 8, providing that counties, townships, etc., may be vested with power to assess and collect taxes "for corporate purposes."—CONGAREE CONST. CO. v. COLUMBIA TP., S. Car., 27 S. E. Rep. 570.

96. RAILROAD COMPANY—Insolvent Cable Railways—Preferential Claims.—When the holder of a claim against a railroad company, which, upon an adjustment of its indebtedness, would be entitled to a preference over its bonds secured by mortgage, has brought an action upon such claim before the commencement of a suit to foreclose the mortgage, he does not lose his right to a preference in the distribution of the proceeds of the sale of the company's property, by prosecuting his action on the claim to final judgment.—CENTRAL TRUST CO. v. CLARK, U. S. C. C. of App., Eighth Circuit, 81 Fed. Rep. 269.

97. RAILROAD COMPANY—Street Railroads — Change of Grade—Damages.—Where a street-railway company is by statute granted a right of way, with a provision that, in the construction of its tracks, it shall conform to the grade of the street as established, or thereafter to be established, it cannot recover damages from the city for an impediment to travel caused by a change of grade made in the street by the city, and delay in the work, where the delay was not willful and not unnecessary, apart from a mere mistake of judgment by the city as to the best manner of doing the work.—RIDGE AVE. PASS. RY. CO. v. CITY OF PHILADELPHIA, Penn., 37 Atl. Rep. 910.

98. RAILROAD COMPANY — Street Railroads — Negligence.—It is not negligence for a railroad company operating small cars on streets by a dummy not to so guard the cars as to prevent a trespassing child under seven years old from getting on and off the cars while being operated, or from falling or being thrown from such cars.—JEFFERSON v. BIRMINGHAM RAILWAY & ELECTRIC CO., Ala., 22 South. Rep. 546.

99. RAILROADS—Contract to Give City "Terminal Rates."—A contract by a railroad company to carry freight to a certain city at "terminal rates" if "the people" of the city would furnish a right of way through the city, alleged to have been accepted by "complainants and others," is unenforceable because of uncertainty as to parties, and as to the service promised, and also for want of mutuality.—CLARK v. GREAT NORTHERN RY. CO., U. S. C. C., D. (Wash.), 81 Fed. Rep. 282.

100. RAILROAD RECEIVERS—Adoption of Leases.—Receivers of a mortgaged railroad have the option to assume or to renounce within a reasonable time the leases of branch railroads which they find in the possession of the mortgagor, and are directed to operate.—MERCANTILE TRUST CO. v. FARMERS' LOAN & TRUST CO., U. S. C. C. of App., Eighth Circuit, 81 Fed. Rep. 254.

101. REAL ESTATE AGENTS—Commissions.—A landowner, by employing an agent to effect a sale of the land, does not thereby preclude himself from hiring other agents to sell it, or from effecting a sale himself, provided that in making the sale himself he acts in good faith.—CROOK v. FORST, Ala., 22 South. Rep. 540.

102. RECEIVERS—Suits against—Acts of Prior Receivers.—A receiver appointed by a federal court for a road formerly constituting part of a larger system is not liable to be sued in another court, without permission of the appointing court, for alleged wrongful acts committed in the operation of the road by the receivers of the whole system, whom he has displaced; and such a suit will be enjoined.—JONES v. SCHLAPBACK, U. S. C. C., N. D. (Ga.), 81 Fed. Rep. 274.

103. RES JUDICATA—Executors and Administrators.—An order of distribution was made after the real estate of an estate had been sold, and the assets marshaled, as a result of a suit brought by the administrator, who resisted a subsequent application for the payment of a legacy, on the ground of satisfaction by taking a mule belonging to the estate: Held, that such defense was *res judicata* as against the administrator, as he had failed to mention the mule in the appraisement and on his accounting, and, when the estate was marshaled, he did not show that any advancement had been made to the legatee.—PERKINS v. PERKINS, S. Car., 27 S. E. Rep. 551.

104. SPECIFIC PERFORMANCE — Failure of Complainant to Perform.—A lessor will not be compelled to acknowledge the lease, so it may be recorded, and to specifically perform it, where the lessees have failed to pay the rent and to keep the property in good repair, as required by the lease, and have broken other covenants contained therein.—BAMBERGER v. JOHNSON, Md., 37 Atl. Rep. 900.

105. TAXATION—Personal Property—Elevators.—Elevators owned by other parties, situated on the right of way of a railroad company, are, for purposes of taxation, personal property.—STATE v. RED RIVER VALLEY ELEVATOR CO., Minn., 72 N. W. Rep. 60.

106. TRESPASS — False Imprisonment.—Where a person whose house had been broken into and robbed makes a complaint for a search warrant in due form, after stating the facts to the officer, and nothing more, he is not responsible for the action of the officers in departing from the writ, nor for the arrest and detention of a person suspected of the robbery.—LINNEN v. BANFIELD, Mich., 72 N. W. Rep. 1.

107. TRUST—Charitable Uses.—A valid trust for charitable uses, and not a perpetuity, was created by a devise of land to a religious association in trust, to devote the income to keeping testator's family lot in the meeting house graveyard, and to distribute the balance, within specified limits as to amount, to home or foreign missions, and the residue among the needy poor of the vicinity, as the trustees and their successors might think best.—NAUMAN v. WEIDMAN, Penn., 37 Atl. Rep. 863.

108. WILLS—Construction.—A will is to be construed, not alone by its language, but by the condition of the testator's family and estate, and the judicial expositor should put himself as far as possible in the position of the testator, and take into consideration the circumstances surrounding him when the will was executed.—ERNST v. FOSTER, Kan., 49 Pac. Rep. 527.

109. WILLS—Construction—Nature of Estate.—Testator gave the residue of his estate to his wife, with full authority to sell the same, and execute deeds therefor, and provided that, "if any of the same be left over after her death, I order it to be divided amongst my children, share and share alike:" Held, that the wife took a life estate only.—IN RE SCHMID'S ESTATE, Penn., 37 Atl. Rep. 928.

110. WILL—Gift per Stirpes.—Where a will gave property to testator's wife for life, and then proceeded: "And after her death I give the same to my three sons, H, A, and A J, during the term of their natural lives, and then to the children that each may have surviving them," — the children took *per stirpes*. — BETHEA v. BETHEA, Ala., 22 South. Rep. 561.

111. WILL—Limitation of Actions.—Under a devise of all the testator's estate to his widow for life, remainder to his children, with a further provision that two of the daughters should have $380 each to make them "equal with the other children according to what they have received," the specific legacies to the two daughters were not payable until the death of the widow, and the statute of limitations did not begin to run against them until then.—SOUTHWORTH v. SEBREE, Ky., 41 S. W. Rep. 769.

112. WILL CONTEST — Burden of Proof. — It is proper to instruct the jury in a will contest to find for the will unless they believe that when the testator "executed said paper he had not mind and memory enough to understand that he was selecting the persons whom he wished to have his property, and to know his property, the natural objects of his bounty, and his duty to them." — HOWAT v. HOWAT'S EXR., Ky., 41 S. W. Rep. 771.

113. WITNESS—Competency.—A witness is not incompetent to testify, in a suit by an executor against a third person, as to indebtedness of such person to the estate, because witness is also indebted to the estate, and such third person would have an interest in the money which witness might pay the estate.—WALLS v. WALLS, Penn., 37 Atl. Rep. 859.